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WP.No.22666 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.11.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMANIAM**

and

THE HONOURABLE MR.**JUSTICE M.JOTHIRAMAN**

W.P.No.22666 of 2022

1.Union of India rep by
Workshop Personnel Officer,
Railway Central Workshop
Ponmalai, Tiruchirapalli

2.Deputy Chief Engineer -I,
Gauge Conversion
Southern Railway
State Bank Road
Tiruchirapalli-01.

...Petitioners

-VS-

1.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai – 600 104.

2.Shri G.Baskaran

...Respondents

PRAYER: Writ petition filed under Article 226 of Constitution of India
to issue a Writ of Certiorari to call for the records of the first respondent
pertaining to OA.No.1499 of 2017 and order passed thereon dated



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06.03.2019 and quash the same.

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For Petitioners : Mr.C.Kulanthaivel, SPC

For Respondent : R1 – Tribunal
No appearance for R2.

ORDER

(The Order of the Court made by Justice **M. JOTHIRAMAN**)

Under assail is the order dated 06.02.2019 in OA.No.1499 of 2017 on the file of the Central Administrative Tribunal, Madras Bench. The unsuccessful respondents/department in OA have preferred the present writ petition before this Court.

2. The 2nd respondent who was working as a Jeep Driver under the petitioners/department. On 14.06.2008, while he was driving official Jeep for the transportation of Executive Engineer (construction) from Tiruchirappalli to Karaikudi, caused an accident resulting in an injury to a minor boy Master Vinoth s/o.Alagappan.

2(i). The parents of the child has filed MCOP.No.66 of 2010 before the Sub Court, Pudukottai claiming compensation for a sum of Rs.5,00,000/-. After due enquiry vide order dated 30.10.2015, directed



the petitioners/department to pay the compensation of Rs.1,30,000/- along with 7.5% interest. The said amount was paid from the Railway Revenue to comply with the Courts order. The police has registered a criminal case against the 2nd respondent and he appeared before the Magistrate Court, duly accepting his rash / careless driving in the Court and remitted a fine of Rs.1,500/-. Based on the advise received from the Audit para, vide (Non – Personnel, POS-2) minutes of meeting held on 01.08.2016, the Deputy Chief Engineer/I, Gauge Conversion, Thiruchirappalli confidential letter dated 16.03.2017, the 2nd respondent was advised for the recovery of compensation amount of Rs.1,92,613/- from his salary in 30 installments and recovery has also been commenced besides initiating disciplinary action.

2(iii). The 2nd respondent submitted a representation dated 23.03.2017, to stop recovery of compensation amount from his salary. In the meanwhile, the second respondent has preferred OA.No.589 of 2017 before the Central Administrative Tribunal, challenging the recovery order dated 16.03.2017. The Tribunal vide order dated 11.04.2017, at the stage of admission itself had directed the petitioners to consider the representation dated 23.03.2017 and pass an appropriate orders in



accordance with law, within a period of four weeks from the date of receipt of copy of that order.

2(iv). The petitioners/department have disposed of the representation dated 23.03.2017 of the 2nd respondent on 09.05.2017 by confirming the earlier order of recovery. Thereafter, the petitioners/department issued letter dated 21.06.2017 to the 2nd respondent wherein it has been reiterated the recovery of compensation amount of Rs.1,92,613/- from the 2nd respondent and the same was also duly communicated to the 2nd respondent vide letter dated 15.07.2017.

3. Aggrieved over the orders dated 16.03.2017 and 15.07.2017, the 2nd respondent has filed OA.No.1499 of 2017, vide order dated 22.09.2017, the Tribunal stayed the operation of recovery from salary and subsequently vide order dated 06.03.2019, quashed the recovery order dated 15.07.2017. Aggrieved over the same, the petitioners/department, has preferred the present writ petition.

4. The learned counsel appearing on behalf of the petitioners would submit that the Tribunal failed to consider the fact that the 2nd



respondent himself admitted the negligence before the Sub Court, Pudukottai in MCOP case and pleaded guilty and remitted fine amount of Rs.1500/- before the Magistrate Court. He would submit that the liability under the Motor Vehicle Act being one under no fault liability, does not prohibit, the Railway Administration from recovering loss and or damage caused by its employees on account of gross culpable negligence and dereliction of duty. He would submit that the 2nd respondent/Driver was retired from service on 31.05.2020 and a sum of Rs.1,91,613/- was withheld from his leave salary.

5. Notice was duly served on the 2nd respondent and name was also printed in the daily cause list of Madras High Court and not chosen to appear before this Court either in person or through his counsel.

6. We have considered the submissions made by the learned counsel for the petitioners and perused the materials available on record.

7. On perusal of the records, reveals that the 2nd respondent was working as motor vehicle driver in the petitioners/department. The 2nd respondent, while working under the control of the second petitioner,



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caused an accident on 14.06.2008 resulting in an injury to a minor boy by name Master Vinoth s/o. Alagappan.

7(i).Consequently, the Sub Inspector of Police, Thirukokarnam police station has registered a criminal case in Cr.No.238 of 2008 for the offences under Section 279 and 337 IPC against the 2nd respondent. The 2nd respondent has admitted the offence and paid the fine amount of Rs.1500/- in STC.No.1052 of 2008 before the Judicial Magistrate, Pudukottai on 19.08.2008.

7(ii). The 2nd respondent also filed the petition in STC.No.584 of 2009 before the Judicial Magistrate, Pudukottai, wherein 2nd respondent was pleaded guilty under Section 41(A) r/w.39 and 192 of Motor Vehicle Act and prayed to forgive and release from the offence. By an order dated 17.06.2009 passed the following order :-

“Accused present. Copies furnished to accused and questioned. Accused pleaded guilty and also filed admission petition. Accused found guilty u/s.41(7) r/w.39 7 192 M.V.Act.

In the admission petition accused has stated



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that he is first offender working as driver in southern railway, if he convicted it will affect his future. Police also concedes that no previous case is pending. Considering above circumstances and in the interest of justice, accused is release u/s.3 P.O.A after due admonition.”

7(iii). The parents of the child has filed MCOP.No.66 of 2010 before the Sub Court, Pudukottai claiming a compensation of Rs.5,00,000/-. On behalf of the petitioners/department, the 2nd respondent/Driver was examined as RW1 in MCOP.No.66 of 2010, on behalf of the injured victim, his father was examined as PW1 and the injured minor was examined as PW2, after due enquiry, the Court was finding that due to negligence on the side of the 2nd respondent/Driver alone, the accident was occurred, and fixed the liability on the department, held that the department is liable to pay the compensation of Rs.1,30,000/- along with interest at 7.5% to the inured minor boy.

7(iv).The Workshop Personnel Officer/GOC letter dated 16.03.2017 addressed to the 2nd respondent, wherein it has been stated as



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follows :-

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“As per the advise of Dy.CE/I/Gauge Conversion/TPJ, it is proposed to recover a sum of Rs.1,92,613/- (Rupees one lakh ninety two thousand six hundred and thirteen only) being the Compensation amount in Motor Vehicle Compensation Original Petition (MCOP) No.66 of 2010 and CA.No.6183 of 2015, from your salary commencing from the month of April 2017 onwards at Rs.6420/- in 30 installment.”

7(v). The 2nd respondent submitted representation dated 23.03.2017 before the petitioners/departments requesting to stop the recovery of compensation amount from his salary. In the meanwhile, the 2nd respondent approached the Central Administrative Tribunal in OA.No.589 of 2017, the Tribunal vide order dated 11.04.2017 directing the petitioners/departments to consider the representation of the 2nd respondent dated 23.03.2017 and pass appropriate orders in accordance with law.

7(vi). Thereafter, the Workshop Personnel Officer/GOC by an



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order dated 25.05.2017, disposed of the representation of the 2nd respondent dated 23.03.2017, wherein it has been stated as follows :-

“As directed by the Hon'ble Central Administrative Tribunal, Madras Bench while passing order in the above said OA, your representation dt:23.03.2017 has been considered by the appropriate authority viz., Dy.Chief Engineer /Gauge Conversion-I/TPJ and passed orders exempting recovery of the interest component for the compensation amount from your salary (copy enclosed).

Hence, you are hereby advised that the compensation amount of Rs.1,30,000/- (Rupees one lakh thirty thousand only) which was paid by the Railway Administration to the Court as compensation in response to the order passed by the Sub Court Pudukkottai in MCOP Case No.66/2000 under Motor Vehicles Compensation Act, shall be recoverable from your salary in 30 equal monthly installments.

This disposes of your representation dated



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23.03.2017.”

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7(vii). The Senior Law Officer/CN/Ms addressed a letter dated 21.06.2017 to the 2nd petitioner wherein it has been stated as follows :-

“The Hon'ble Sub Court, Pudukkottai by its order dated 30.10.2015 had directed the respondents to pay Rs.1,30,000/- plus 7.5% interest from the date of filing petition till payment towards compensation for the injuries sustained by the minor Vinod in an accident took place on 14.06.2008 near Narikuravar Colony Bus Stop, Keeranur, Pudukkottai.

It is seen from the calculation statement vide letter dated 27.04.2016 and 08.06.2016 that the amount of Rs.1,92,613/- was paid towards compensation along with 7.5% from the date of filing the petition (08.01.2010 to 09.06.2016) till payment as ordered by the Hon'ble District Court, Pudukkottai.

Therefore the amount of Rs.1,92,613/- deposited with the Hon'ble District Court, Pudukkottai may be recovered from the salary of the employee.”



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7(viii). The Deputy Chief Engineer-I/Gauge conversion office-I, Tiruchirappalli addressed the letter dated 15.07.2017 to the 2nd respondent, wherein it has been stated as follows :-

“In your appeal dated 16.06.2017 has been carefully considered and it is observed that the spirit of the letter of D.CE/GC-I/TPJ dated 09.05.2017 is not understood properly. The interest paid by the Railways for the compensation has not been waived or said as unrecoverable from your salary. It is now clarified that the total amount of compensation paid is Rs.1,92,613/- (Rupees one lakh ninety two thousand six hundred and thirteen only). The said amount is to be recovered from your salary in instalment basis.

So, there is leakage or revenue to Railways by the payment of the said compensation amount by way of inters, the said leakage of revenue / interest is to be calculated for the amount paid from Railway revenue from your salary.



Consequently, it was decided that

“considering your case sympathetically the interest for the compensation amount paid from Railways is charged and deducted from your salary.” That does not mean that the interest incurred by Railways while disposing the compensation amount is waived.

It has been clarified also by the Law Branch that the amount of Rs.1,92,613/- deposited with the Hon'ble District Court, Pudukkottai may be recovered from the salary of the employee. Please note.”

8. Aggrieved over the order of the petitioners/department dated 16.03.2017, 25.05.2017 and 15.07.2017, the 2nd respondent has filed OA.No.1499 of 2017. The Tribunal vide order 22.09.2017 passed an interim order staying the operation of recovery from salary and based on which recovery from salary was stopped from the month of October 2017 by the petitioners/department.

9. In continuation by an order dated 06.03.2019, the Tribunal



allowed the OA and quashed the order dated 15.07.2017, on the ground that the petitioners cannot proceed against for recovery of amount without giving an opportunity to the 2nd respondent to defend his case in MCOP, in which the compensation was awarded and the petitioners/department ought to have impleaded the 2nd respondent/Driver in the said MCOP as the negligence was attributed to him. But the fact remains that on behalf of the petitioners/department, the 2nd respondent/Driver was examined as RW1 in MCOP.No.66 of 2010. During course of cross examination, the 2nd respondent candidly admitted the fact that he has remitted the fine amount after accepting his guilty before the learned Magistrate Court, Pudukottai. It is settled law that when the employee pleaded guilty, it is obvious that what ever the compensation amount paid by the department will be recovered from the erring employee/officials. It is also trite law that any unwarranted loss to the public exchequer, can be recovered from the person responsible. It is relevant to cite the judgment of the Hon'ble Supreme Court reported in **(1994) 1 SCC 243 - Lucknow Development Authority Vs. M.K. Gupta** wherein in paragraph 11 it has been held that “....*When the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is*



paid for inaction of those who are entrusted under the Act to discharge

their duties in accordance with law. It is, therefore, necessary that the

Commission when it is satisfied that a complainant is entitled to

compensation for harassment or mental agony or oppression, which

finding of course should be recorded carefully on material and

convincing circumstances and not lightly, then it should further direct

the department concerned to pay the amount to the complainant from the

public fund immediately but to recover the same from those who are

found responsible for such unpardonable behaviour by dividing it

proportionately where there are more than one functionaries". The case

on hand before us, it is specifically admitted guilty, by the 2nd

respondent/Driver before the Court of law in STC.No.584 of 2009 and

also participated in the MCOP proceedings and he was deposed evidence

on behalf of the petitioners/department. In view of the above legal

principles, the findings of the Tribunal that the petitioners/department

ought to have impleaded the 2nd respondent/Driver in MCOP as the

negligence is attributed to him and consequently, annexure A9 impugned

order of recovery dated 15.07.2017 was quashed and allowed the OA, are

liable to be set aside.



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10. We are of the firm view that any unwarranted loss to public exchequer shall be recovered from the 2nd respondent, specifically admitted by him before the Court of law. Therefore, the findings of the Tribunal is not justified in law and interference of this Court is warranted, there are merits on the case of the petitioners/department and writ petition is liable to be allowed.

11. In the light of the above discussion, the writ petition stands allowed and the order of the Tribunal dated 06.03.2019 in OA.No.1499 of 2017 is hereby set aside. The petitioners/ department shall proceed further to recover the balance amount from the 2nd respondent, as per service law applicable to the 2nd respondent. No costs.

(S.M.S.J.)

(M.J.R.J.)

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

1.The Registrar

Central Administrative Tribunal

Madras Bench,

Chennai – 600 104.



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S.M.SUBRAMANIAM.J.

and

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