

(2005) 08 AHC CK 0010
In the Allahabad High Court
Case No : Spl. A. No. 497 of 2005

Dushyant Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Constitution of India, 1950 — Article 300A
Motor Vehicles Act, 1988 — Section 146(2)

Citation : (2007) 1 ACC 157 : (2007) ACJ 2637 : AIR 2006 All 109

Hon'ble Judges : Ajoy Nath Ray, C.J.; Jagdish Bhalla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an appeal from an order of an Hon"ble Single Judge passed on the 23rd of July, 2005, dismissing the writ petition of the appellant-writ petitioner. He is a Government Driver and is aggrieved by a Government Order dated 27.1.2005, by which an order for recovery of Rs. 41, 569/-with 9% interest has been passed against him; the recovery is to be made in 60 monthly instalments.
2. This order was made because the Government had to pay an awarded sum of Rs. 31, 500/- in a motor accident claim, as per the order of the Motor Accident Claims Tribunal.
3. The appellant was the Driver of the Government vehicle, which was alleged to have caused the accident. u/s 146(2) of the Motor Vehicles Act, 1988, the Government vehicles need not have insurance. This vehicle did not have one.
4. In the Motor Accident Claims Tribunal case, there were two defendants; the first was the State and the second was the Driver, although in the cause title his name could not be stated, as not being known to the victim of the accident.
5. A joint written statement was filed; both the State and the Driver denied the factum of the accident.

6. The Motor Accident Claims Tribunal negated the defence; entered a finding of rash and negligent driving as against the State and the Driver and awarded the sum mentioned above.

7. The State Government alleges that the money has been paid to the victim; we have no reason to doubt the statement.

8. The recovery order against the Driver has been passed without taking recourse to any other proceedings; no attempt was made to obtain any binding order or of any Tribunal or Court in favour of the State against the Driver; the recovery was ordered straightaway.

9. The Government supports its action on the basis of the Supreme Court decision given in the case of Lucknow Development Authority Vs. M.K. Gupta, .

10. The portion of the judgment relied on by the Government is also set out by the learned Single Judge in his Lordship's judgment; we quote it below too:-

...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.

11. The Commission referred to in the above passage refers to that mentioned in the Consumer Protection Act. The dicta of the Supreme Court are directed towards the Commission ordering a consequential payment against the person, who is in fact, and really, to blame. Whether this dictum will have reference or relevance in regard to any order, which might have been passed by Motor Accident Claims Tribunal, is not an issue before us. However, we are quite clear that this case does not authorize or permit the Government to impose on its own a decree against the Driver, and also pass an order of execution itself by way of a departmental order.

12. learned Counsel appearing for the respondents relied upon a decision of the Supreme Court in Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar, . That was case dealing with a highly placed ONGC officer overstaying in staff quarters after completion of his tenure of service; the Supreme Court refused to find in favour of the officer in regard to the payment order which has been made for overstaying.

13. In our respectful opinion, the facts in that case and in our case are substantially different.

14. Article 300A being a constitutional, though not a fundamental, right, it stops the deprivation of right to property of a citizen without recourse being taken to some regular and authorized process of law. Money is also property. Some standard process of law and adjudication in this case as between the State Government and the Driver was an essential precondition before the money liability could be fixed upon the Driver, i.e. the appellant.

15. First of all, the State had denied the accident itself; if the accident is denied, it cannot be in the same breath said that the Driver has been negligent and had caused the accident. In a proceeding, the Government would have to overcome the first hurdle, that it is permitted in a subsequent proceeding to make the claim on the basis of a pleading of fact, which is contrary to a sworn pleading, earlier tendered before the competent Tribunal on their behalf.

16. Assuming that this is permissible, the issue of negligence would have to be decided once again as between the State and the Driver; the issue is not closed by a decision as between the victim of the accident on the one hand and the State and the Driver on the other. The issue of negligence could not arise or be gone into as the defence was one of denial of accident.

17. It would have to be gone into if the State wake to sue the driver. Even if questions and answers have been put in the earlier trial, it would not be a res judicata as between the State and the Driver or raise any point of issue; estopped this is because the array of parties would be totally altered in the case between the State and the Driver.

18. The procedure for avoiding this type of second litigation by deciding the rights and liabilities as amongst the plaintiffs and the defendants as well as amongst the defendants themselves inter se in the same trial, is known as inter pleader, which is unknown to the CPC of our country. It would not be possible, ordinarily speaking, for the Motor Accident Claims Tribunal to enter into these issues in this manner; it can only apportion liability amongst the defendants, but not say that one defendant will pay another this sum, on the basis of a liability determined as between two defendants.

19. Although the steps as above are to be taken by the State, yet, we would have thought, that before imposing financial liability, a show cause would have been issued; it does not require any application of any fine point of law, but only an attitude of fair dealing, to issue this show cause notice before money liability imposed.

20. With the greatest of respect, we set aside the order of dismissal of the writ petition passed by the Hon"ble Single Judge. The Appeal is allowed; the writ petition is also allowed. The impugned order of recovery dated 27-1-2005 is quashed for the reasons mentioned above. The State and the other parties involved are permitted to take their future course of action in accordance with law, but as at present no recovery can be made from the salary and emoluments normally payable to the appellant.