
(2011) 04 SHI CK 0072
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 12512 of 2008

Hoshiar Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2011) 04 SHI CK 0072

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—This petition has been preferred by the Petitioner, who was employed as a driver with the Health Department of the State, praying that order (Annexure- A/1 to the petition) passed by the Chief Medical Officer, Kangra on 7.4.2005, directing recovery of Rs. 1,29,020/-from his pensionary benefits, be quashed and set aside.

2. This order was passed on the basis of the judgment passed by learned Motor Accident Claims Tribunal-(I), Kangra at Dharamshala, in M.A.C. Petition No. 36-D/II-2002, decided on 9.8.2004. The Petitioner herein was arrayed as Respondent No. 2. The first Respondent was the State of Himachal Pradesh through Secretary Health.

3. In that case, it was alleged and proved on the record that on 6th January, 2001 at around 10.50 A.M. when the Petitioner therein Shri Amit Thapa was riding a scooter and proceeding to his house to Yol, when Jeep No. HIK-794 being driven by the Petitioner herein dashed with the scooter causing the accident resulting in fracture of the left leg of the claimant who also lost one tooth. On the settled issues, most important of which being issue No. 3, "as to whether the Jeep was being driven by the Petitioner in a rash and negligent manner", and on the question of apportionment of the liability, the learned

Tribunal, holds that the Jeep was infact being driven in a rash and negligent manner by the Petitioner herein which was the basic cause of the accident. The Court also found that the claimant had sustained injuries and was referred to the PGI, Chandigarh for treatment where he had to spend about Rs. 33,448.20 paise on treatment and further a sum of Rs. 27,498/- as expenses for traveling etc. He had suffered 20% permanent disability and in these circumstances was entitled to compensation of Rs. 2,06,846/-.

4. There was categoric finding under issue No. 3. The liability of the State and the Petitioner was held to be joint and several. It is pursuant to that judgment that the order Annexure-A/1 has been passed.

5. A number of submissions have been made on behalf of the Petitioner challenging the order of recovery holding the Petitioner responsible for the act. The primary ground urged is that there was no fault on the part of the Petitioner. In order to substantiate this submission, learned Counsel referred to the judgment and more especially the evidence of the occupant of the Jeep at that time, Dr. Narinder Singh Bedi RW-1, who stated that there was no act of negligence/rashness on the pat of the Petitioner herein. It is also urged by the learned Counsel that the criminal case instituted against the Petitioner arising out of the same accident resulted in his acquittal. judgment of the learned Judicial Magistrate Ist Class has been placed on the record holding his acquittal on the ground of granting him benefit of the doubt.

6. In these circumstances, learned Counsel submits that the order cannot be sustained, more especially, when the departmental witness exonerated the Petitioner, there was no cogent evidence in the criminal proceedings and more important that no show cause notice etc. was issued to the Petitioner before the order of recovery was passed. Since it entailed civil consequences, the fundamental requirement of law was to have at-least given notice and conducted some kind of inquiry, failing which the order was liable to be struck down as violating Article 14, being in conflict with the fundamental guarantee of equality and principles of natural justice as enshrined therein.

7. Prima facie the arguments urged on behalf of the Appellant appear to in conformity with the settled law. However, what must not be lost sight of is the fact that a judgment of a Criminal Court is not binding on a Civil Court. Thorough examination of the evidence on record, led the learned Tribunal to conclude that the Jeep was being driven in a rash and negligent manner. The liability was also apportioned jointly and severely. The judgment in the criminal case proceeds on the question of identification of the Petitioner herein. It is undisputed before me that no appeal has been preferred against the judgment of the Motor Accident Claims Tribunal placed on the record as Annexure-A/3. In these circumstances, when a judicial authority has thoroughly scrutinized the evidence on record, the judgment cannot be faulted with, more especially by indirect means through the present petition.

8. In these circumstances, it cannot be said that the Petitioner was taken unaware by the judgment having finally determined the liability of the parties not challenged before any Court, cannot now be questioned either by way of petition u/s 19 of the Administrative Tribunals Act or in departmental proceedings.

9. One other point urged on behalf of the Petitioner is that the master is vicariously liable for the acts of his servant. This is the settled proposition on the principles of law as enunciated from time to time. However, they do not preclude the master from recovering any damage etc. which has been caused by the servant.

10. In the facts and circumstances, I hold that there is no illegality in the order of recovery. This petition is accordingly dismissed.

11. The dismissal of this petition shall not preclude the Petitioner herein from approaching his employer for any other relief for which purpose he will make a representation to the State. A further direction is issued that the recovery be effected from the account of the Petitioner in a manner which does not place undue financial burden on him.