

(2009) 08 MAD CK 0455

In the Madras High Court

Case No : Writ Petition No. 34959 of 2006 (T) O.A. No. 628 of 2001

K. Annadurai

APPELLANT

Vs

The Chief Engineer, Agricultural Engineering Department, The
Superintendent Engineer, Agricultural Engineering
Department and The Assistant Executive Engineer,
Agricultural Engineering Department

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 94(2)
Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 8(V)
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Departmental Vehicles Control Rules, 1976 — Rule 22

Citation : (2009) 08 MAD CK 0455

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R. Prasana Devy, for the Appellant; V. Arun, Additional Government
Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader for the respondents.

2. The brief facts of the case are as follows:

The petitioner is a Jeep Driver in the Agricultural Engineering Department. On 23.5.1994, while he was on duty in the office of the Executive Engineer (Agricultural Engineering), Tiruchirapalli, he had taken a vehicle, with registration No. TDY 1895, to the work shop, for attending to some minor repairs. On his way to the workshop, he had parked the vehicle in front of a Hotel, at Ariyalur, to have light refreshment. When he came out of the Hotel, he found that the vehicle was missing. He was told that a person, by name Arjunan, had taken the vehicle, unauthorisedly and had caused an accident. Due to the accident, one Saraswathi,

had suffered serious injuries. Therefore, a claim petition had been made, in M.A.C.T.O.P. No. 315 of 1995, on the file of the Motor Accidents Claims Tribunal, Ariyalur, claiming compensation of Rs. 1,00,000/- from the Government.

3. The Government of Tamil Nadu represented by the District Collector, Tiruchirapalli, and the Executive Engineer (Agricultural Engineering), Tiruchirapalli, had been cited as the respondents in the Motor Accident Claims case.

4. In the counter affidavit filed by the respondents before the Motor Accidents Claims Tribunal, Ariyalur, it has been stated that the accident had occurred, while the vehicle was being driven, unauthorisedly, by one Arjunan and that the Department was not in any way responsible for the accident. The petitioner had not been impleaded as a party in the said case. However, the Motor Accident Claims Tribunal, Ariyalur, by its judgment, dated 4.8.1999, had awarded a compensation of Rs. 43,600/- to the claimant, namely, Saraswathi. Thereafter, the third respondent, by his proceedings No. E.1304/94, dated 25.1.2000, had initiated proceedings, against the petitioner, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by framing the following charges.

1. That the petitioner had carelessly left the Jeep No. TDY 1895 on 23.5.1994 without locking the vehicle.

2. By such carelessness of the petitioner, he had caused loss of Rs. 43,600/- to the Government.

5. Thereafter, the third respondent had passed the final orders, in Pro. No. E.1304/94, dated 26.12.2000, directing the recovery of a total sum of Rs. 79,626/- from the pay of the petitioner, in monthly instalments.

6. In the reply affidavit filed on behalf of the respondents, it has been stated that, on 23.5.1994, at about 9.00 p.m., one Saraswathi of Ariyalur was hit by the Jeep bearing registration No. TDY 1895, belonging to the office of the Assistant Executive Engineer (Agricultural Engineering), Soil Conservation Scheme, Ariyalur. The Inspector of Police, Ariyalur, had stated in his report that the vehicle had not been locked when it was parked in front of the Hotel. One Arjunan took away the vehicle and due to his rash driving, he had caused an accident, causing injury to Saraswathi.

7. The Motor Accident Claims Tribunal, Ariyalur, in its order, dated 4.8.1999, made in M.A.C.T.O.P. No. 315 of 1995, had held that the accident had occurred due to the negligence on the part of the driver and it had awarded a compensation of Rs. 43,600/-, together with 12% interest, to be paid to the claimant. The Government, in G.O.Ms. No. 36, Agriculture Department, dated 9.2.2001, had sanctioned a sum of Rs. 79,626/-, including the interest and other charges payable to the claimant.

8. Disciplinary action had been initiated against the petitioner, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 25.1.2000, and

final orders had been passed, on 26.12.2000, to recover the amount paid as compensation, from the petitioner.

9. It has been further stated that since it was a Sunday, there was no need for the petitioner to take out the vehicle at night. As a responsible Government servant and as the custodian of the Government property, the petitioner ought to have locked the vehicle before going into the Hotel to take refreshment. Further, on coming to know that the vehicle was missing, he should have informed the Superiors and should have also lodged a complaint with the police. According to the police report, Arjunan is known to the petitioner. Therefore, since the accident had occurred due to the negligence on the part of the petitioner, he is responsible for the loss caused to the Government by way of the payment of compensation to the injured, saraswathi. Even though no enquiry had been conducted against the petitioner, since there is no such necessity, the departmental proceedings were initiated, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as the Motor Accident Claims Tribunal, Ariyalur, had come to its conclusion, after a detailed enquiry. In such circumstances, the present writ petition filed by the petitioner is devoid of merits and therefore, it is liable to be dismissed.

10. In support of his averments, the learned Counsel appearing for the petitioner had relied on the decision of the Division Bench of this Court, reported in Tamil Nadu State Transport Corporation (Kumbakonam Dn-II) Ltd. Vs. P. Karuppusamy, , wherein it has been held that the Transport Corporation, having taken a plea before the Claims Tribunal that their employee (Bus Driver) was not responsible for the accident, cannot dismiss him after conducting domestic enquiry and by holding that he was guilty of the charges.

11. Per contra, the Additional Government Pleader, appearing for the respondents, had placed before this Court G.O.Ms. No. 398, Home (TR.IV) Department, dated 1.3.1988, in support of the contentions raised on behalf of the respondents. The said Government Order reads as follows:

Under Section 94(2) of the Motor Vehicles Act, 1939, Vehicles owned by Central and State Governments need not be insured. Accordingly to Rule 22 of the Tamil Nadu Departmental Vehicles Control Rules 1976 all Government owned vehicles/enterprise are exempted from insurance against third party risks and the Government have to settle the claims, if any, arising out of the accidents in which departmental vehicles are involved, in the same way as the private insurance companies with which private motor vehicles are generally insured. The Government vehicles in consultation with the Director, Motor Vehicles Maintenance Department. The Director, Motor Vehicles Maintenance Department is of the opinion that the Government Vehicles need not covered by insurance policies against third party risk, since it will involve payment of a huge amounts as premium.

2. Government Accept the views of the Director, Motor Vehicles Maintenance

Department. Government also direct that the present procedure laid down in Rule 22 of Tamil Nadu Department Vehicles Control Rules 1976 to settle claims, if any, by the Government be allowed to continue.

3. In order to enforce strict discipline among the drivers of Government Vehicles, Government have examined the question of recovering token amount from the drivers in cases of accidents to Government Vehicles. Government consider that under the provisions of Rule 8(V)(a) of the Tamil Nadu Civil Services (CCA) Rules, when any pecuniary loss is caused to Government by the negligence of the Government Servants, recovery from their pay of the whole or part of such pecuniary loss may be made by way of penalty. In these circumstances, Government, consider that there is no need for making separate rules for effecting token recovery from the drivers in case Government vehicles get involved in accidents.

12. In view of the averments made by the learned Counsel appearing for the petitioner, as well as the learned Additional Government Pleader appearing for the respondents, and on a perusal of the records available, this Court is of the considered view that the impugned proceedings of the third respondent, dated 26.12.2000, is not sustainable in the eye of law. Having taken the stand before the Motor Accidents Claims Tribunal, Ariyalur, in M.A.C.T.O.P. No. 315 of 1995, that the respondent Department is not responsible, in any way, for the accident that had occurred, on 23.5.1994, it would not be open to the respondents to hold that the petitioner is responsible for the loss that had occurred due to the payment of compensation to the claimant, Saraswathy. Further, it cannot be said that the accident had occurred due to the negligence of the petitioner or that he was directly responsible for the accident. Since the petitioner was not a party to the proceedings before the Motor Accidents Claims Tribunal, Ariyalur, he cannot be held liable, without a proper opportunity having been given to him.

13. In such view of the matter, the impugned proceedings of the third respondent cannot be held to be valid in the eye of law. Accordingly, the writ petition stands allowed. No costs.