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**(2015) 07 JH CK 0086**  
**In the Jharkhand High Court**  
**Case No : WP(S) No. 7151 of 2006**

Shyam Nandan Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 06-07-2015

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2015) 4 AJR 66 : (2015) 3 JLJR 415

**Hon'ble Judges :** Rongon Mukhopadhyay, J

**Bench :** Single Bench

**Advocate :** Ananda Sen, for the Appellant; Rakhi Rani, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

Rongon Mukhopadhyay, J—In this writ application the petitioner has prayed for quashing the order dated 30.9.2006 issued by the respondent No. 3 whereby and whereunder it has been decided to recover Rs. 1,10,000/- from the salary of the petitioner. The petitioner has also prayed for quashing the order dated 22.11.2006 as contained in Memo No. 2870 whereby and whereunder the respondent No. 4 had directed to deduct Rs. 5,500/- per month from the salary of the petitioner in twenty installments so that recovery can be made in terms of the letter issued by the respondent No. 3. The petitioner was appointed as a Constable in June, 1976 and posted at Hazaribagh. The petitioner obtained the provisional driving licence in 1979 issued by the District Transport Officer, Hazaribagh and thereafter he was posted as a Constable-Driver. An Accident Claim Case No. 130 of 1995 was instituted wherein allegations were made that on account of rash and negligent driving by the petitioner of Police Van No. BR-01H-4609 led to an accident which caused the death of one Jamni Devi. The Accident Claim Case was decided on 24.6.2005 wherein the Tribunal directed the opposite parties to pay an amount of Rs. 1,10,000/- as compensation. Prior to passing of the award by the Tribunal, the petitioner was transferred from

Hazaribagh to Nawadah in September, 1995. After bifurcation of the State, the petitioner was transferred from Nawadah to the District of Aurangabad in the present State of Bihar in the year 2001. The respondent No. 3 issued a letter dated 30.9.2006 addressed to the Inspector General of Police (Budget), Jharkhand, Ranchi wherein it was intimated that action be taken for recovery of amount of Rs. 1,10,000/- from the salary of the petitioner. The Superintendent of Police, Aurangabad by virtue of letter dated 10.11.2006 informed the petitioner that the amount of Rs. 1,10,000/- shall be deducted from his salary. In spite of objection made by the petitioner, direction has been issued by respondent No. 4 to recover an amount of Rs. 5,500/- per month in twenty instalments from the salary of the petitioner.

2. Heard Mr. Ananda Sen, learned counsel appearing for the petitioner and Mrs. Rakhi Rani, learned J.C. to Sr. S.C.-II.

3. Mr. Ananda Sen, learned counsel appearing for the petitioner has submitted that in the claim case which was instituted under Section 166 of the Motor Vehicles Act, the petitioner was never made a party, rather the State of Bihar through the Deputy Commissioner, Hazaribagh and the Superintendent of Police, Hazaribagh were the opposite parties. It has been submitted that when the petitioner was not a party in the Claims Tribunal the petitioner could not have been proceeded against for recovery of the amount of compensation of Rs. 1,10,000/- as awarded by the Tribunal. It has further been submitted that after bifurcation of the erstwhile State of Bihar the services of the petitioner was finally allocated in the State of Bihar as such the respondent Nos. 3 and 5 did not have any jurisdiction to take steps for recovery of the compensation amount.

4. A counter affidavit has been filed on behalf of the respondent No. 3 wherein it has been stated that the accident occurred on account of rash and negligent driving by the petitioner who was driver of the vehicle bearing Registration No. BR-01H-4609 and in such circumstance since the Tribunal had come to a finding that the driver of the offending vehicle was responsible for the death of deceased Jamni Devi no illegality has been caused for taking steps for recovery of Rs. 1,10,000/- from the salary of the petitioner.

5. After hearing the learned counsel for the parties, it appears that the Claim Case No. 130 of 1995 was instituted by one Hem Narain Prasad Kushwaha wherein it has been stated that the mother of the claimant namely Jamni Devi died in a motor accident said to have taken place on 26.6.1995. In the claim case the Deputy Commissioner, Hazaribagh and Superintendent of Police, Hazaribagh were made party. A judgment was passed on 26.4.2005 wherein the claimant was awarded compensation of Rs. 1,10,000/-. If indeed the petitioner was the driver of the offending vehicle bearing Registration No. BR-01H-4609 it was necessary for the petitioner to be arrayed as a opposite party but the petitioner was never made a opposite party and as a result of which the petitioner never got an opportunity to put forward his defence to prove his innocence.

6. It further appears that the respondent No. 3 has sought permission from the Tribunal for recovery of the amount from the salary of the petitioner which was rejected on 5.9.2006 as being not maintainable. Neither the petitioner had an opportunity to defend himself in the Claims Tribunal nor the respondents had initiated any departmental proceeding against the petitioner for recovery of Rs. 1,10,000/- awarded by the Tribunal. The entire episode of recovery has been orchestrated behind to back of the petitioner which is a blatant violation of the principles of natural justice and in such circumstance the letter dated 30.9.2006 issued by the respondent No. 3 as well as the letter dated 22.11.2006 issued by the respondent No. 4 is not in accordance with law and, accordingly, both the letters are quashed and set aside. This application is, accordingly, allowed.