

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 36/91
~~XXXXXX~~

199

DATE OF DECISION 28.07.1992

K. Vijayan Applicant (s)

Mr. Thomas Antony Advocate for the Applicant (s)

Versus

Union of India, represented by The Ministry of Communication, New Delhi & 2 others. Respondent (s)

Mr. V.V.Sidharthan, ACGSC, Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is a Driver attached to the Mail Motor Service, Kozhikode. His grievance is against the recovery of a part of compensation awarded by the Motor Accidents Claims Tribunal disposing of the claim petition submitted by the fish monger who sustained injury in the accident which took place on 31.8.1984.

2. On 31.8.1984 the applicant was driving mail van KRZ 632. It involved in an accident resulting in injury to a fish monger. The injured filed an accidents claim petition before the Motor Accidents Claims Tribunal as M.A.C. No.101 of 1985. As per Annexure-C award the liability was fixed on the applicant and the Union of India. The Tribunal held that the driver of the van is liable to pay the amount of compensation. The 3rd respondent (Union of India) owner is vicariously liable. He passed an award

directing respondents 2 and 3 to pay to the petitioner Rs.13,800/- with interest at 12% per annum from 28.2.1985 and Advocate's fee of Rs.400/-. He further directed that the 3rd respondent shall discharge the liability at the first instance. M.F.A. 248 of 1988 filed against Annexure-C was dismissed at the admission stage with the following observations:-

"4. The Tribunal fixed the quantum of compensation based on the evidence of PW1. It found that expert evidence is lacking regarding permanent disability. The Tribunal accepted the plea of the petitioner that he was making Rs.750/- per month. The compensation was fixed on this basis. We cannot say that the Tribunal acted without any material in awarding a total compensation of Rs.20,700/- and in holding that the petitioner is entitled to recover 2/3 of the said amount (Rs.13,800/-) from respondents 2 and 3. After all in fixing the quantum of compensation, the primary court or Tribunal cannot be expected to fix it on a strictly scientific or mathematical basis. We do not find any error in the quantum of compensation awarded."

Thereafter, the Senior Superintendent of Post Offices, Kozhikode, informed the applicant that action contemplated under Rule 16 will be initiated against the applicant. Annexure-E was served on the applicant with Annexure-F statement of imputations. Ultimately, Annexure-G proceedings dated 29.6.1990 was xxxx passed directing the recovery of a sum of Rs.11,100/- from the pay of the applicant in 30 monthly instalments of Rs.370/- each commencing from the pay of July 1990 payable in August 1990. A further order dated 9.11.1990, Annexure-A, was also passed by the Director of Postal Services. The applicant is challenging both Annexures A and G in this application. He has also produced Annexure-B judgment of the Judicial Magistrate of 2nd Class, Kozhikode, to establish that there was no negligence on his part and he was acquitted in the criminal case C.C. 305/85 holding not guilty of the charges.

3. The learned counsel for the applicant submitted that the applicant is not liable for the compensation awarded in this case because of the vicarious liability of the Union of India as found by the Motor Accidents Claims Tribunal in the award Annexure-C, particularly when the criminal court has found that the applicant was not negligent in this behalf. He has also submitted that under Motor Vehicles (Third Party Insurance) Rules, 1946 the driver has no liability and if at all any compensation is to be paid on the basis of the award it is to be adjusted against the fund to be established under Part I-A of the said Rules for meeting the liability arising out of the use of any motor vehicle of that authority which that authority or any person in its employment may incur to third parties including liability arising under workmen's Compensation Act, 1923.

4. With regard to the establishment of the fund under Part I-A of the Motor Vehicles (Third Party Insurance) Rules, 1946 no information is available. In spite of sufficient time ~~was~~ given to the learned counsel for the respondents he was not in a position to give correct and complete information about the establishment of the fund under the provisions of the above said Rules. Rule 15A of the Rules reads as follows:-

"15A. Establishment of the fund. - The authority may at any time establish a fund for meeting any liability arising out of the use of any motor vehicle of that authority which that authority or any person in its employment may incur to third parties including liability arising under the workmen's Compensation Act, 1923."

If the authority has established a fund as contemplated in Rule 15A for meeting the liability arising out of the use of any motor vehicle of that authority, the liability

of the employees appears to be met with from that fund. The learned counsel for the applicant submitted that such fund has been established and thereby the applicant has no liability to pay the amount as mentioned in the impugned orders. This is an aspect which has not been considered by any of the authorities. No enquiry seems to have been made by the Department as to whether such a fund has been established for meeting the liability arising in connection with the motor vehicles mentioned by the authority.

5. The learned counsel for the applicant further submitted that the applicant is to be exonerated from the liability in the light of Annexure-B judgment of the Judicial Magistrate of 2nd Class, Kozhikode, finding that the applicant is not guilty and he was acquitted from the charges. We have gone through the impugned orders, Annexures A & G. The applicant's submission that he should be exonerated from the liabilities on account of the finding that he is not guilty of any negligence has also not been specifically adverted to or considered by the authorities. The third submission made by the learned counsel for the applicant based on the finding of the Motor Accidents Claims Tribunal in Annexure-C judgement that the Union of India has vicarious liability ^{on behalf} for paying the amount of compensation of the applicant as observed by the Tribunal, was also not examined in detail by the authorities while fixing the quantum of liability. It is stated in Annexure-A that based on the direction in Annexure-C award of the Motor Accidents Claims Tribunal, Kozhikode, the Department paid an amount of Rs.19,936/- as compensation and an order was passed to recover from the applicant Rs.11,100. In the light of the finding

of the Tribunal that the Department has vicarious liability, we are not told under what criteria the Department has fixed this quantum of Rs.11,100/- in the order.

6. Though the respondents have filed a reply statement, there is no mention about the basis under which the Department has fixed the quantum of Rs.11,100/- as part of the applicant's liability when the total amount of compensation as fixed by the Motor Accidents Claims Tribunal is Rs.13,800/- with 12% interest per annum from 28.2.1985 plus Rs.400/- as Advocate's fee. In the light of the finding of the Motor Accidents Claims Tribunal that the Department is vicariously liable, respondents ought to have fixed the proportional liability to be paid by the applicant taking a compassionate view considering the fact that the applicant is a low paid Driver.

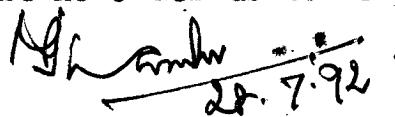
7. In the course of the arguments, the learned counsel for the applicant submitted that since there is no stay of recovery ~~xxx~~ major portion of the amount has been realised from the salary of the applicant on the basis of the instalments mentioned in Annexure-G order.

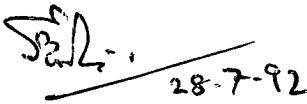
8. From the Annexure-D order of the High Court in M.F.A. No.248/1988 it is seen that the injured is entitled to recover 2/3rd of the compensation amount (Rs.13,800/-) from the applicant and the Department jointly. The High Court has not fixed/ ^{the} appropriate quantum of liability of the applicant. Under these circumstances it is all the more reasonable for the respondents/ ^{to have} fixed the liability of the applicant with equitable considerations taking into account the contention that he was not negligent and that the

finding of the primary court (Motor Accidents Claims Tribunal) that the Department has vicarious liability. Since the respondents have not taken into consideration all the relevant aspects or focussed their attention to the contentions of the applicant raised before us, we are of the view that justice in this case will be met if we set aside Annexures A & G orders and remit the matter to the Director of Postal Services so as to enable him to pass a fresh order correctly fixing the quantum of liability to be contributed by the applicant towards the payment of compensation to the injured in accordance with law with equitable considerations.

They shall also take into account the fact that Rule 15-A of the Motor Vehicles (Third Party Insurance) Rules 1946 they are expected to establish a fund from which not only their vicarious liability but also the liabilities which their employees incur are to be met. The exemption given to their vehicles from being insured is given on the presumption of their establishing such a fund, so that the claims of the third party do not suffer by the absence of any insurance company to meet the claim and inability of the low paid drivers to meet the claim even on a shared basis. This shall be done within a period of four months from the date of receipt of a copy of this order. On the basis of the outcome if the applicant is eligible for refund of any amount, the same shall be disbursed to the applicant without any delay. It goes without saying that the respondents shall not continue the recovery pursuant to Annexure-G order from the applicant's salary.

9. The application is accordingly allowed. There will be no order as to costs.


28.7.92
(N.DHARMADAN)
JUDICIAL MEMBER


28.7.92
(S.P.MUKERJI)
VICE CHAIRMAN