

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 18TH DECEMBER 1986

PRESENT: HON'BLE SHRI CH.RAMAKRISHNA RAO, MEMBER(J)
HON'BLE SHRI P. SRINIVASAN, MEMBER(A)

APPLICATION NO. 1247/86(T)

Shri K. Abdul Khader,
S/o Koya,
aged 59 years,
House No. T.C. 35/1268,
Priyadarshini Nagar,
Vallakkadavu,
MIVANDRUM. 8.

APPLICANT

(Shri N.B. Bhat, Advocate)
Vs.

1. Engineer-in-Chief,
Army Head Quarters,
DHQ Post, NEW DELHI. II

2. Garrison Engineer,
(P) (I) R & D WEST,
Suranjandas Road,
Bangalore- 560 075.

3. Chief Engineer,
(P) R & D Picket,
SECUNDARABAD.3.

4. Union of India,
By Secretary to Government,
of India, Ministry of Defence,
New Delhi.

Respondents

(Shri M.S. Padmarajaiah, Advocate)

This application has come up for hearing before
this Tribunal to-day, Member(A) made the following:

O R D E R

This is a transferred application received from
the High Court of Karnataka. The applicant was working

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in the office Garrison Engineer, Bangalore, (R2) as a civilian driver. On 27.7.1978, the truck which the applicant was driving was involved in an accident with a motor cycle driven by a certain Shri Pichaiah. A criminal case ^{was} initiated against the applicant for rash and negligent driving (CC NO.1105/78) but the Metropolitan Magistrate, Bangalore, acquitted the applicant of the charges under Section 279 and 338 of the IPC by an order dated 12.3.1983. Separately a Board of Enquiry was constituted by the respondents which went into the role of the applicant and held that the applicant was not responsible for the accident which was due to the rash and negligent driving of Shri Pichaiah, the motor cycle driver. This finding of the Court of Inquiry was confirmed by the Commander, Karnataka Sub-Area who directed that the case against the applicant be treated as closed. However, Shri Pichaiah filed a claim before the Motor Vehicle Accident Claims Tribunal, Bangalore, under Section 110A of the Motor Vehicles Act of 1939 in which he impleaded respondents 2 and 4 as well as the applicant. The Tribunal awarded Shri Pichaiah a sum of Rs. 17,623.88P. as compensation along with interest at the rate of 6% plus the costs incurred by Shri Pichaiah. It was ordered that the petitioner, Shri Pichaiah should recover the entire amount from all the respondents, viz the applicant, the Garrison Engineer and the Union of India. The Tribunal observed that the applicant

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...3/-

had driven the truck on the wrong side of the road with rashness which resulted in the accident. The respondents in the present application took the matter further to the High Court, but the latter confirmed the award and rejected the appeal. Thereafter the respondents paid the damages awarded with interest amounting in all to Rs. 21,435/- . Then they took up the question of apportioning this amount as between the parties who were impleaded in the case before the Tribunal (applicant) which included the driver. It appears that the authorities under whom the applicant was working, the Engineer-in-Chief recommended to the Ministry of Defence that only nominal recovery be made from the applicant but this proposal was turned down by the Ministry of Finance. Thereafter, Respondent No. 1, the Engineer-in-Chief, addressed a letter dated 18.6.1983 (Annexure J) to respondent No.2, the Garrison Engineer which read as follows:

"A case for making only nominal recovery from the individual in view of his low pecuniary position was referred to Min of Defence duly recommended. But it is regretted that the Min of Finance has not agreed to the proposal and have insisted upon recovery of 50% of the compensation from Shri Abdul Khader, MT Driver.

You are therefore requested to initiate immediate action in this regard and inform this HQ accordingly."

Meanwhile the applicant had retired from service on 31.10.1982. He was due to be paid terminal benefits totalling Rs. 11614/- including gratuity, provident fund etc. The respondents adjusted 50% of the damages paid under the award of the Tribunal i.e. Rs.11201/- against the amount due to the applicant and paid him only the balance of Rs. 413/-. The applicant's grievance before us is that the respondents were not

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right in ordering recovery ^{from him} of 50% of the claim awarded.

He prays that respondent 2 should be directed not to make recovery in this regard from the gratuity and provident fund due to him and to pay the amount of gratuity and provident fund to him in full.

Shri N.B. Bhat, learned counsel for the applicant, points out that under the relevant rules, no attachment could be made on the balance standing in the General Provident fund in pursuance of a decreee and if that be so, no part of the provident fund could be held for an amount which the respondents considered the applicant to be liable. This was only a claim made by the respondents who could not unilaterally determine the amount due and ~~not~~ set it off against the terminal benefits due to the applicant. So far as gratuity is concerned, he drew support from the Payment of Gratuity Act which similarly prohibits attachment. He also urged that the criminal complaint against the applicant having failed and the Board of Enquiry constituted by the respondents having cleared the applicant of negligence of any type, the respondents should not have claimed any amount from the applicant because what had happened was in the course of his employment as a driver. Further the applicant being a low-paid employee could not forgo his entire terminal dues for something ^{as for} which even the respondents did not hold him guilty. If at all the respondents felt that some amount should be recovered from the applicant as his contribution, they should have filed a suit against him and should not have withheld the terminal benefits due to him.

Shri M.S. Padmarajaiah, learned counsel for

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the respondents, strongly refuted the arguments of Shri Bhat. Whatever may have been the sympathies of the authorities, the Accidents Claim Tribunal had clearly laid the liability on all persons impleaded therein i.e. the respondents and the applicant. That being so, the respondents did the natural thing by apportioning the damages equally between themselves and the applicant. The provision that no attachment could be made on a provident fund ^{or} of gratuity does not mean that amounts due could not be set off when making payment. The Accidents Tribunal had held that the applicant was negligent and in the light of that finding, the respondents were perfectly within their rights to fix the contribution of the applicant at 50% of the total and setting off the same against the dues to the applicant.

We have given the matter anxious consideration. The award of the Claims Tribunal is clearly against all the respondents before it which included the applicant. Therefore we cannot get away from the fact that the applicant is also one of the persons to pay the compensation. We do not propose to go ^{action} into the legality of the ~~stand~~ taken by the respondents in setting off the amount which they considered ^{against his terminal dues} was due from the applicant. However, in so far as the apportionment is concerned, we feel it was harsh on the applicant to ask him to share the damages equally with the respondents particularly when the respondents themselves felt that the applicant was not guilty of negligence and the criminal

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court had also acquitted the applicant of that charge. The accident occurred when the applicant was performing his duty. Moreover, the applicant is a low-paid pensioner and denying him of his entire terminal benefits would cause undue hardship to him. After taking all facts into account, we feel it would meet the ends of justice to determine the share of damages to be recovered from the applicant at Rs. 4000/- (approximately $\frac{1}{5}$ th of the total amount). We would direct the respondents to set off Rs. 4000/- against the terminal benefits due to him and pay him the balance ~~to him~~ forthwith and in any case within two months from the date of receipt of this order.

In the result the application is partly allowed as indicated. There is no order as to costs.

C. B. Rao

(MEMBER) (J)

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(MEMBER) (A)