

**Central Administrative Tribunal
Madras Bench**

OA/310/01499/2017

Dated 6th March Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. R.Ramanujam, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)**

G.Baskaran
S/o P.Ganesan,
146/A-2 V.G.P.Nagar, Valdadi Post,
Lalgudi Taluk,
Tiruchi District. .. Applicant

By Advocate **M/s.M.V.Venkataseshan**

Vs.

1. Union of India, rep by
Workshop Personnel Officer,
Railway Central Workshop,
Ponmalai Tiruchirappalli.
2. Deputy Chief Engineer/I
Gauge Conversion,
Southern Railway,
State Bank Road,
Tiruchirappalli-01. .. Respondents

By Advocate **Mr.K.Vijayaragavan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“(i) call for the records relating to the impugned orders in No.GPB(G)483/Bills & Leave dated 16.3.2017 No.GPB/353/Court Cell/2017 dated 25.5.2017 and No.W 148/GC-I/TPJ dated 15.7.2017 passed by the respondents, (ii) quash the same.”

2. The applicant's case is that the applicant is a Jeep Driver under the respondents and on 14.6.08 while he was driving the official jeep for the transportation of Executive Engineer(Construction) from Tiruchirappalli to Karaikkudi there occurred an accident and a minor child Vinod sustained injuries on his leg. According to the applicant, the accident occurred due to the negligence of the minor child. The parents of the child filed MCOP 66/2010 before the Sub-Court Pudhukkottai claiming a compensation of Rs.5 lakhs. The Railway administration appeared before the Sub-Court and resisted the application contending that the applicant's Driver was not at all negligent and responsible for the accident. But the Sub-Court has passed an award for giving compensation of Rs.1,30,000/0 by the respondent administration. The Railway administration did not file any appeal. In the meanwhile, Police had registered Criminal Case against him and he appeared before the Magistrate Court and in order to avoid difficulties to the department the applicant pleaded guilty to the charges and remitted a fine of Rs.1500/-. The respondents are now trying to recover an amount of Rs.1,92,613/- from the salary of the applicant being paid by the department as compensation. The applicant had earlier filed OA 589/2017 and this

Tribunal had granted interim stay against the recovery. When the matter came up for Final Hearing, it appeared that no specific order was passed and directed the respondents to file a representation against recovery and the Tribunal had passed a direction to the respondents to consider the representation of the applicant in accordance with law on 11.4.2017. The respondents had considered the above direction and passed an impugned order on 15.7.2017 to recover an amount of Rs.1,92,613/- from the salary of the applicant.

3. The respondents appeared and filed a detailed reply denying the allegations in the OA. According to them, the accident occurred due to the negligence of the applicant. Further, consequent to the accident, the MCOP filed before the Sub-Court seeking compensation was awarded and the respondents had to pay an amount of Rs.1,30,000/- with 7.5% interest per annum from the date of application till the date of payment. So, the department had to pay an amount of Rs.1,92,613/- as compensation to the victim. According to the respondents, the applicant has pleaded guilty under Sections 279, 337 of IPC and paid penalty before the Magistrate Court, Pudukkottai and he was convicted and orderd to pay Rs.1500/- for the offence. So, it is clear that the accident had taken place because of the negligence of the applicant and hence he is not entitled to get any relief as prayed for.

4. The short point to be considered in this case is whether the respondents are entitled to recover Rs.1,92,613/- from the applicant as compensation paid to the victim.

5. We have carefully gone through the pleadings and heard both sides. CFA

submitted that the compensation was ordered by the Sub-Court, Pudukkottai in MCOP 66/2010 and if we go through the said order, it can be seen that the applicant was not a party to the said proceedings and he was not given an opportunity to be heard before the compensation was awarded. The applicant mainly relies on the decision of the Hon'ble High Court in ***K. Annadurai v. Chief Engineer, Agricultural Engineering Department, Chennai & Others reported in (2009) 7 MLJ.*** In the said case, the respondents had resisted the MCOP before the Tribunal contending that the Driver of the vehicle was not at all negligent and they are not liable to pay any compensation. But the Tribunal awarded the compensation. Thereupon the respondents had initiated disciplinary proceedings against the applicant therein holding that he was responsible for causing the accident. But the Hon'ble High Court has held that the respondents therein had taken of a contention that the Driver was not at all negligent during the enquiry in MCOP and they are not entitled to take a different stand thereafter. The MCOP was allowed in favour of the applicant therein. But the counsel for the respondents would contend that the applicant had pleaded guilty before the Magistrate Court and he was sentenced to pay Rs.1500/- and he is liable to pay the compensation paid by the department.

6. On anxious consideration of the rival contentions, it can be seen that the respondents Railway had resisted the MCOP before the Sub-Court, Pudukkottai contending that the Driver was not at all negligent for causing the accident. After due enquiry, the Tribunal has awarded compensation to the victim. The respondents had not taken up the matter in appeal and the award has become final. On going through

the above MCOP 66/2010, it can be seen that the applicant herein was not at all a party in the above proceedings and he was not given a chance to prove his innocence in accordance with the contentions of the respondents. The compensation was awarded in the said MCOP and the said compensation is being attempted to be recovered from the applicant herein. The applicant ought to have been impleaded in the said MCOP as the main allegation is negligent driving. The respondents without doing the same has contested the matter stating that the applicant was not at all negligent and it is not because of his negligence the accident has taken place. In MCOP case, the finding of the Magistrate Court has no material bearing and only preponderance of probability is taken for arriving at the conclusion for negligence. So, the finding of guilty by the Magistrate Court cannot seriously influence the decision of the Tribunal in MCOP 66/2010. Facts being so, it is not clear how the respondents are proceeding against the applicant for recovering the amount from the applicant. The stand taken by the respondents before the Tribunal was that the applicant was not at all negligent in driving the vehicle and it was not the actual cause for the accident. The Hon'ble Madras High Court in K. Annadurai v. Chief Engineer, Agricultural Engineering Department, Chennai & Others referred supra held that

“....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.....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.”

7. In view of the above decision, we are of the view that the applicant cannot be

proceeded against for recovery of the amount without giving an opportunity to defend his case in the MCOP in which case compensation was awarded. The respondents ought to have impleaded the Driver in the said MCOP as the negligence is attributed to him. Accordingly, Annexure A9 impugned order dated 15.7.2017 of the respondents to recover compensation from the applicant cannot stand.

8. In the result, the OA stands allowed and Annexure A9 impugned order of recovery dated 15.7.2017 will stand quashed.

(P.Madhavan)
Member(J)

06.03.2019

(R.Ramanujam)
Member(A)

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