

WPSS No.1387 of 2004

Hon'ble Kalyan Jyoti Sengupta, J.

Mr. S.C. Bhatt, Advocate present for the petitioner.

By this writ petition, the petitioner has challenged the impugned order dated 12.10.2004 by which the amount of compensation which was paid in terms of order of learned Motor Accident Claims Tribunal to kins of victim is sought to be recovered from the petitioner. None appears for the respondents. Hence, I take up the matter for hearing, as it is an old one in absence of learned counsel for the respondents

The facts of the case are as follows :

The petitioner, now retired, was a permanent driver of Uttaranchal Pariwahan Nigam and was posted at the relevant point of time at Lohaghat Depot Tanakpur. On 11.01.2000, the petitioner was driving a bus from Delhi to Dharchula. According to him, he was driving the said vehicle with due care and caution as a reasonably prudent driver does. His further version is that there was no negligence in his driving nor did he drive vehicle rashly. However, on that date, as the vehicle met with an accident with scooter whereon the scooter driver and pillion rider sustained serious injury. When one of the injured Satyendra Pal Singh was taken to the Hospital, he succumbed to injuries.

Hence, the kins of victim filed petition claiming compensation before learned Motor Accident Tribunal at Moradabad. The Tribunal found that the accident occurred due to rash and negligent driving of the petitioner. Thereafter, respondents were directed to pay compensation amount as mentioned in the order. Hence a sum of Rs. 1,70,000/- was awarded as compensation in favour of the applicant and respondents were directed to pay aforesaid amount alongwith interest thereon @ 9% per annum. By the impugned order, the aforesaid amount sought to be recovered under the rules.

In paragraph 4 of the writ petition, it is stated that no disciplinary proceedings were initiated nor any notice of hearing was given and this impugned order passed without giving any opportunity of being heard. In the Counter affidavit, in reply to paragraph 4 of the said writ petition, it is stated that since petitioner was a witness to the said proceedings before the Tribunal and he has stated in own version before It. Therefore, he knows about the consequences. His claim and contention have been rejected by the learned tribunal.

Therefore, it is clear that there has been no denial of the petitioner's assertion that opportunity of hearing was not given before passing impugned order.

In my view, the petitioner was not a party before learned Tribunal, he was summoned as a witness for recording his testimony. Therefore, his evidence before the tribunal cannot be equated with his defence that could have been taken in domestic enquiry. In a matter of this nature, I think that the respondent authority should have initiated full fledged disciplinary proceedings for taking penal measure, that is taken here. The petitioner cannot get the judgment of the learned Tribunal because he was not party to the proceedings. Therefore, opportunity should have been given to the petitioner. Under what provision, aforesaid penal measure has been taken is not clear before me. This impugned order has got serious civil and evil consequence, and it is settled law when any action is taken aiming at to inflict any liability, principle of natural justice has to be followed.

It is not a case of conviction of the petitioner as an accused in a case of rash and negligent driving so much so immediate action would be necessary. It is not clear whether the respondent has paid entire compensation amount in terms of order of learned Tribunal to the victim nor it is clear whether the judgment of learned Tribunal has become final. Immediately after receipt of this judgment, in my opinion, a copy of

thereof should have been supplied to the petitioner forthwith to enable him to take legal action before the appropriate forum. The department has not afforded such opportunity.

Therefore, the impugned order cannot be sustained and same is set aside. It would be open for the respondents to take action afresh with issuance of appropriate show cause notice and after hearing the petitioner, affording him all opportunities of being heard. This shall be done within a period of three months from the date of communication of this order. If this exercise is not completed within time stipulated by this Court, the issue will be closed chapter as the petitioner has retired during the pendency of the writ petition. I have given opportunity to the department to initiate fresh because the alleged incident occurred when the petitioner was in service and it is continuing incident. In that case, all the retrial benefits withheld by the department shall be released. Before I part with this judgment, if there is a legal provision to recover the compensation amount paid by the respondents arising out of any Motor accident from the driver concerned, the department shall before initiating any action for recovery of any amount, take following steps:

1. a copy of the judgment, recording rash and negligent driving vehicle must be supplied to the driver concerned forthwith to enable him to take steps in accordance with Law.
2. Before taking any action it must be proved that the compensation amount has been paid by the respondents.

Without taking recourse to the aforesaid steps, no action shall be taken for recovery.

The writ petition is disposed of. No order as to costs.

(K.J. Sengupta, J.)

31.12.2012

JKJ