

the tenant's permissible area that benefit availed to the landowner to contend that the tenant's permissible area must be vis-a-vis his own ownership. The fact that he has not preferred an appeal against the order dated 15th December, 1976 cannot defeat the landowner's right to contend that the property which was declared as surplus would require to be nullified by the finding rendered in the appeal filed by Nihal Singh that he was entitled to the said extent as falling within the tenant's permissible area.

(4) The learned counsel for the State and the counsel for Nihal Singh would contend that proper remedy for the landowner was only to apply for rectification before the revenue authorities by filing a civil suit and he cannot have any relief in an appeal filed by Nihal Singh, where the petitioner was merely a respondent in the appeal and the revision. The objection is not one of substance but a matter of procedure. I will not allow myself to be fettered in my jurisdiction to deny to the petitioner the relief of what could come through a civil litigation when I have already found that the petitioner is entitled to be treated as a landowner of the property. The impugned order stands modified and the writ petition is allowed to the above extent of directing the State to correct the entry in the column relating to ownership by substituting the name of the petitioner instead of the State.

Before Mahinder Singh Shllar J.

CONST. BHUPINDER SINGH, DRIVER,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 14509 of 1991

7th April, 2011

Constitution of India, 1950—Art. 226—Punjab Civil Service (Punishment & Appeal) Rules, 1970—Rl. 10—Motor Vehicle Act, 1988—94 & 146—Petitioner while driving vehicle in discharge of official duty met with accident—MACT allowed claim—Neither State nor petitioner filed appeal—Respondent—State decided to recover awarded amount of petitioner—SSP issued order of recovery from salary—Order challenge—Petition accepted.

Held, That the petitioner was driving the offending vehicle in discharge of his official duty, which was not insured by the State Government and he was held vicariously liable. The principles governing the concept of ‘vicarious liability’ of an employer in accident cases is not res intergrata and is well settled.

(Para 16)

Further held, that one of the basic canons of justice is that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause. As a general rule, an authority entrusted with the task of deciding between the parties or empowered to make an order which prejudicially affects rights of any individual or visits him with civil consequences is duty bound to act in consonance with basic rules of natural justice including the one that material sought to be used against person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of concept of rule of law.

(Para 19)

D. V. Sharma, Senior Advocate with Shivani Sharma, Advocate *for the petitioner.*

R. S. Rawat, Assistant Advocate General, Punjab *for the respondents.*

MEHINDER SINGH SULLAR, J.

The conspectus of the facts, culminating in the commencement relevant for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that petitioner Constable Bhupinder Singh was working as a Driver in the office of Senior Superintendent of Police (for brevity “SSP”), Faridkot. On 10th November, 1987, he was driving the Matador, vehicle bearing registration No. PJO 1405 and was on official duty. He was returning from the Civil Secretariat, Punjab Chandigarh and was going back to Faridkot. As soon as, at about 4.30 P.M., he reached near T. Chowk of Sector 10, in the meantime, a scooter bearing registration No. CHT-4775, being driven by

Dr. Gurbinder Kaur Sandhu, came there and the accident had taken place, in which. Sachwant Kaur, 67 years old lady had died and the driver of the scooter sustained injuries. A criminal case was registered against the petitioner, by means of FIR bearing No. 463, dated 10th November, 1987, on accusation of having committed the offences punishable under sections 279 and 304-A IPC, by the Police of Police Station Central, Chandigarh, in which, he was acquitted by the Judicial Magistrate 1st Class, by way of judgment of acquittal dated 20th February, 1991.

(2) The petitioner pleaded that claimants Dr. Gurbinder Kaur Sandhu driver of scooter as well as legal representatives of the deceased filed two separate claim petitions under the Motor Vehicles Act, 1988 (hereinafter to be referred as 'the MV Act'). The claim petitions were contested on behalf of Punjab State and Gonind Ram, IPS, the then SSP Faridkot filed written statement (Annexure P1) in the Court.

(3) Having completed all the codal formalities, the claim petitions were accepted and the amount of Rs. 40,000 was awarded to Dr. Gurbinder Kaur Sandhu on account of injuries sustained by her in the accident in question and Rs. 18,000 to Major Kundan Singh etc. 1 Rs. on account of death of Mrs Sachwant Kaur, alongwith interest @ 12% p.a.—*vide* award dated 27th October, 1990.

(4) The case set up by the petitioner, in brief in so far as relevant, was that the State of Punjab after obtaining the opinion of Legal Remembrancers, decided not to file the appeal against the award of MACT and petitioner being a poor constable, was not in a position to deposit an amount of Rs. 25000 for filing the appeal. Therefore, the award of MACT attained finality. Although the respondent-State intended to implement the award, but decided to recover the awarded amount for the petitioner in easy installments, by virtue of impugned order memo dated 24th June, 1991 (endorsed on 28th June, 1991) (Annexure P2). In pursuance thereof, the SSP (respondent No. 3) ordered the recovery of awarded amount of Rs. 58,000 from the salary of the petitioner in 60 monthly instalments, by way of another impugned order dated 8th August, 1991 (Annexure P3).

(5) Sequelly, the petitioner did not feel satisfied and preferred the instant writ petition, challenging the impugned orders (Annexures P2 and P3), invoking the provisions of Article 226 of the Constitution of India, *inter*

alia pleading that as the vehicle in question belonged to the State of Punjab, therefore, it was legally duty bound to get the vehicle insured against the third party risks in view of the provisions of the MV Act. The petitioner was not at all aware at the relevant time as to whether the vehicle involved in the accident was insured or not. He was driving the vehicle in discharge of his duty assigned to him by his superior officer.

(6) Levelling a variety of allegations and narrating the sequence of events, in all, the petitioner has challenged the impugned orders (Annexures P2 and P3) *interalia* on the following grounds :—

- (i) *That it is an admitted case that the petitioner was on government duty and the accident had taken place while discharging the official duty during office hours. Therefore, in case the learned Motor Accident Claims Tribunal had awarded compensation because of the accident, the same is to be paid by the Government and cannot be recovered from the petitioner. Therefore, the orders Annexures P2 and P3 are illegal, arbitrary and without jurisdiction.*
- (ii) *That it is also admitted case in the written statement that the petitioner was not negligent in the performance of his duties. Therefore, the petitioner cannot be burdened with the amount and the amount cannot be recovered from the petitioner.*
- (iii) *That in the award both the respondents have made jointly and severally liable to make the payment of the amount by the Motor Accident Claims Tribunal. Therefore, the amount cannot be recovered from the petitioner as the liability of the State is joint and several with that of the petitioner.*
- (iv) *That it was the duty of the State to get the vehicle belonging to the State insured and liability would have been met by the insurance company, otherwise the State Government is fully liable for the payment of compensation in view of the provisions of Section 94 of the Act. Therefore, for the fault of the State the petitioner cannot be burdened with amount and cannot be made to suffer.*

(7) On the basis of aforesaid allegations, the petitioner sought the quashment of impugned orders (Annexures P2 and P3) in the manner indicated hereinabove.

(8) Faced with the situation, the respondents contested the claim of the petitioner and Assistant Inspector General of Police, Personnel, Punjab filed written statement on their behalf *inter alia* pleading certain preliminary objections of maintainability of the writ petition, cause of action and *locus standi* of the petitioner. The factual matrix contained in the writ petition has been acknowledged. However, according to the respondents that the filing of the written statement (Annexure P1) by the then SSP, did not find favour with the MACT and since the negligence of the petitioner in causing the accident in question was proved before the MACT, so, the respondents are within their legal right to recover the awarded amount of compensation from the salary of the petitioner by means of impugned orders (Annexure P2 and P3), which were stated to be valid and legal. It will not be out of place to mention here that the contesting respondents have stoutly denied their liability and other allegations contained in the writ petition and prayed for its dismissal. That is how, I am seized of the matter.

(9) Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

(10) At the very outset, it cannot possibly be denied that it is now well recognized and is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere unless it is found that either the inquiry, proceedings or punishment is vitiated because of non-observation of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend etc. or that punishment is totally disproportionate to the proved misconduct of an employee. At the same time, it is equally well settled principle of law that no punishment can imposed or recovery can be effected from an employee without issuing any show cause notice, providing any opportunity of being heard to him and without holding any inquiry.

(11) Above being the position on record, now the short and significant question, though important, that arises for determination in this case is, as to whether the respondents are legally entitled to recover the amount of compensation from the salary of the petitioner, that too, without issuing any show cause notice providing any opportunity of being heard to him and without holding any inquiry in this relevant connection or not ?

(12) Having regard to the rival contentions of the learned counsel for parties, the answer must obviously be in the negative.

(13) As is evident from the record, that petitioner was the driver of SSP Faridkot and was driving the Government vehicle in discharge of his official duty at the relevant time of the accident in question. In the wake of motor accident claim by the claimants, Gobind Ram, the then SSP, who was conversant with the facts of the case, filed the written statement (Annexure P1) on behalf of State of Punjab, the relevant portion of which (para 24) is in the following manner :—

“That in reply to para No. 24, it is submitted that the facts mentioned in this para are wrong and made out. The real facts are that on 10th November, 1987 the vehicle Matador PJO-1405, was returning to Faridkot after attending official duty in Civil Secretariat, Chandigarh. The vehicle at that time was being driven by the Respondent No. 2, at a speed of 40 km/mph. When the vehicle reached near T. Chowk of Sector 10 at about 4.30 P.M. a scooter CHT/4775 driven by the claimant suddenly emerged from the side of Sector 9 and started moving in front of the Matador. The deceased at that time was also sitting on the pillion seat of the scooter. Suddenly the claimant without giving any indication turned towards right direction to turn to Sector 10. The driver of the Matador who was on slow and on normal speed gave horn, but she did not listen, which resulted into collision between Matador and scooter; Consequently, the lady sitting on the pillion seat of the scooter died, while the claimant, who was driving the scooter, was injured.”

The accident occurred due to the negligence of the claimant, as she was very rash and negligent while driving and did not observe the traffic rules, before turning towards its right direction.

In view of the submission made above, it is submitted that the claim petition be dismissed as the same has no force.”

(14) Not only that, petitioner was acquitted in the criminal case registered against him,—*vide* FIR bearing No. 463, dated 10th November, 1987, for the commission of offences punishable under section 279 and 304-A IPC, by the police of Police Station Central, Chandigarh, by the Judicial Magistrate 1st Class, by means of judgment of acquittal dated 20th February, 1991. It has specifically been pleaded by the petitioner that State Government was statutory duty bound to get the vehicle insured, in view of the provisions of the M. V. Act. The same has not been specifically denied, but acknowledged by the State of Punjab.

(15) Admittedly, the respondents have ordered the recovery of the impugned amount of compensation of Rs. 58000 from the salary of the petitioner, by passing the *ex parte* impugned orders (Annexure P2 and P3). The recovery of impugned amount from the petitioner in lieu of any pecuniary loss caused by him in the Government by negligence or breach of orders is naturally a penalty, which can only be imposed by following the procedure prescribed under Rule 10 of the Punjab Civil Service (Punishment and Appeal), Rules 1970, which postulates that recovery from the pay of an employee of whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders is one on of the penalties, which could be imposed by the competent authority and no order of recovery can be passed except after following the procedure provided under the rules and not otherwise.

(16) It is not a matter of dispute that the petitioner was driving the offending vehicle in discharge of his official duty, which was not insured by the State Government and he was held vicariously liable. The principles governing the concept of ‘vicarious liability’ of an employer in accident cases is not *res integra* and it well settled.

(17) An identical question arose before Hon'ble Apex in case **State of Maharashtra versus Kanchanmala Vijaysing Shrike (1)**. Having considered the relevant provisions of section 146 of the MV Act, it was ruled (paras 11, 12 and 16) as under :—

“A persons who is a servant has always a personal independent sphere of life and at any particular time he may be acting in that sphere. Difference considerations might arise if the servant or some stranger was using the vehicle for purposes other than the purpose of his master business and the accident occurred while the vehicle was being used for that other purpose. But once it is found and established that vehicle was being used for the business of the employer, then the employer will be held vicariously liable even for the lapse, omission and negligence of his driver to whom the vehicle had been entrusted for being driven for the business of the employer. When the act of the servant causes injury to a third party the question is not answered by merely applying the test whether the act itself is one which the servant was ordered or for bidden to do. The employer has to shoulder the responsibility on a wider basis. In some situation he becomes responsible to third parties for acts which he has expressly or implicity for bidden the servant to do.

The courts while judging the liability of the Central or State Government or local authorities or transport undertakings, which have been exempted from the provisions of sub-section (1) of Section 94, have to be more cautious, while recording a finding as to whether in the facts and circumstances of a particular case the Central or the State Government or the local authority or the transport undertaking in question can be held vicariously liable for any act of its employee in the course of employment. As a result of commercial and industrial growth, even motor accidents are on step rise. For no fault or any contributory negligence of the victims of such accidents the families are

(1) (1995) 5 SCC 659

deprived of their bread winners. The jurisprudence of compensation for motor accidents must develop towards liberal approach because of mounting highway accidents.”

(18) What is not disputed here is that neither any show cause notice was issued any opportunity of being heard was granted to the petitioner nor any inquiry was held by the competent authority before passing the impugned recovery orders (Annexure P2 & P3) by the respondents. The petitioner was not given any chance to explain that it was the fault of the State Government to compel him to drive un-insured vehicle and the fact that he was found innocent and was acquitted by the criminal Court. Meaning thereby, the respondents have violated the doctrine of audit *alteram partem*, which vitiates the impugned orders.

(19) Possibly, it cannot be disputed that one of the basic canons of justice is that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause. As a general rule, an authority entrusted with the task of deciding lis between the parties or empowered to make an order which prejudicially affects rights of any individual or visits him with civil consequences is duty bound to act in consonance with basic rules of natural justice including the one that material sought to be used against person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an intergral part of concept of rule of law. This right has its roots in notion of fair procedure. It draws attention of authority concerned to imperative necessity of not overlooking cause which may be shown by the other side before coming to its decision.

(20) Sequel, the employer is not only required to make the employee aware of specific imputations of misconduct but also to disclose material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, final decision gets vitiated on the ground of violation of rule of audi *alteram partem*. Even if there are no statutory rules, which regulate holding of disciplinary enquiry against a delinquent employee, employer is duty-bound to act in consonance with rules of natural justice.

(21) Meaning thereby and thus seen from any angle, as the respondents have not only violated the statutory rules but also ignored the principles of natural justice with impunity, therefore, the impugned orders (Annexures P2 and P3) cannot legally be sustained in the eyes of law in the obtaining circumstances of the case.

(22) No other legal point, worth consideration, has either been urged or passed by the learned counsel for the parties.

(23) In the light of aforesaid reasons, the instant writ petition is accepted with costs. Consequently, the impugned orders (Annexure P2 and P3) are hereby set aside.

S. THAKUR

Before K. Kannan, J.

GIAN SINGH AND ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

CWP No. 20304 of 2009

19th August, 2011

Constitution of India, 1950—226 Indian Stamp (Haryana Amendment) Act, 1973—S. 47(A)—Punjab Stamp (Dealing of under valued instruments) Rules, 1983—RI. 3-A—Petitioners obtained property through public auction from PUDA—Price payable in several installments—Sale deed presented for registration—Collector demanded that valuation shall be made at Collector's rate as on date when sale deed presented for registration—Petitioner challenged before Financial Commissioner—Meanwhile amended notification issued—Petition file to claim benefit of notification—Petition dismissed.

Held, that contention of the learned counsel for the petitioner that there had no finality of the stamp duty payable and so long as there was an appeal pending before the Financial Commissioner, the benefit of the