
M. Jain

Before K. Kannan, J.

GURDEV SINGH,—Petitioner

versus

**MUNICIPAL CORPORATION, LUDHIANA AND
ANOTHER,—Respondents and another**

CWP No. 15988 of 1990

18th May, 2011

Constitution of India, 1950—Art.227—Punjab Civil Services (Punishment & Appeal) Rules, 1970—Rl.5 & 10—Motor Vehicles Act, 1988—Compensation awarded pursuant to award by Tribunal—Amount sought to be recovered from Petitioner on account of finding that accident had resulted due to rash & negligent driving by the Petitioner—Petitioner's contention that this was in the nature of minor penalty—Recovery proceedings without any enquiry is violative of the Rules.

Held. Motor Vehicles Act is a beneficent legislation and Tribunals & Courts look for minimal evidence to secure compensation for the victims. Standard of proof for the Tribunal is even less than what is necessary to be established in Departmental proceedings. Thus mere finding by the Tribunal about negligence ought not to be taken as proof of negligence under Rule 10 and issuance of notice mandated in terms of Rule 10 cannot be dispensed with. Proceedings quashed.

(Paras 5 & 6)

R.S. Longia, Advocate, *for the petitioner*;

None for the respondents;

K. KANNAN, J (ORAL)

(1) The writ petition challenges the proceedings for recover of alleged damages suffered by the Transport Corporation in which the petitioner has been working as a driver. The damages had been assessed in a claim for compensation for accident involving the Corporation's vehicle which was being driven by the petitioner. The Tribunal had found that the accident had been the result of rash and negligent driving of the driver and awarded compensation in MACF case No. 87 of 1986 when the amount, which was directed to be paid, was sought to be recovered from the driver. The objection taken by the petitioner in the writ petition is that a recovery for alleged negligent act of the workman is in the nature of minor penalty and the provision that makes possible the recovery through Rule 5 of the Punjab Civil Services (Punishment & Appeals) Rules, 1970 sets out a procedure through Rule 10 which is not followed. Rule 5 detailing minor penalties of which the recovery provision is as follows :-

- (i)
- (ii)
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the GOVT. by negligence or breach of orders."

(2) Rule 10 prescribes a procedure for imposing penalties which is reproduced as follows :—

“(a)

(b) holding an inquiry in the manner laid down in sub-rules (3) to (3) of Rule 8. in every case in which the punishing authority is of the opinion that such inquiry is necessary;

(c)

(d)

(3) The contention of the petitioner is that the impugned recovery proceedings without any form of enquiry violates the rules and hence, not tenable.

(4) To a query whether such an enquiry was not unnecessary in a case where a Tribunal had already fixed the liability on the Corporation that the driver was negligent, the counsel for the petitioner takes me to the contention raised on behalf of the Corporation before the Tribunal and setting out the defence taken by the Corporation making out a common cause with the petitioner. The Tribunal has observed as follows :—

“The learned counsel for the respondents argued that no criminal case regarding this accident was registered. He also highlighted the contents of Ex.R1, copy of the DDR entry No. 20, dated 5th May, 1986. This DDR entry purports to incorporate the statement of AW Dalip Singh, which he is shown to have made at 3.30 PM on 5th May, 1986 in the Civil Hospital, Ludhiana. Contents of Ex.R1 clearly exonerate respondent No. 1. It is recited in Ex.R1 that when deceased was trying to board the bus, his foot slipped and the body of the bus hit against his thigh and left foot. The accident occurred purely due to the fault of the deceased. The driver of the bus took all precautions to save the deceased.”

(5) Although the Tribunal could pass justifiably an award for compensation only on a finding that there has been negligence on the part of the driver, the standard of proof which is necessary for the Tribunal could

even be less than what is necessary to be established in the departmental proceedings. The Motor Vehicles Act is a beneficent legislation and, therefore, the Tribunals and Courts look for minimal evidence to secure compensation for a victim. Although departmental enquiry itself need not look for extracting standard of proof such as, a criminal case would require, even then if a employer seeks for recovery of some amounts as damages resulting by a negligent conduct, the mere finding by the Tribunal that there have been negligence to justify an award in favour of a victim ought not to be taken as proof of negligence which Rule 10 contemplates. Rule 10 enunciates a principle of fairness and it cannot be diluted by merely transporting the finding of the Tribunal as giving a justification for the employer to dispense with the notice which is mandated through the Rules.

(6) The impugned proceedings through an order of recovery cannot be justified and I uphold the claim of the petitioner that the recoveries were not in accordance with law. The impugned proceedings are quashed and the writ petition is allowed.

M. Jain