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**(2011) 11 AHC CK 0333**

**Allahabad High Court**

**Case No:** Service Single No. 8068 of 2011

Santosh Kumar Mishra

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

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**Date of Decision:** Nov. 9, 2011

**Hon'ble Judges:** Anil Kumar, J

**Bench:** Single Bench

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### **Judgement**

Hon'ble Anil Kumar, J.

Heard Sri Ramesh Chandra Pandey, learned counsel for the petitioner, learned State Counsel for opposite party no.1 and Sri Mahesh Chandra, learned counsel appearing for opposite parties no. 2 to 4.

2. Learned counsel for respondents prays for and is granted four weeks" time to file a counter affidavit, rejoinder affidavit, if any, be filed within two week thereafter.

3. Learned counsel for the petitioner, for the purpose of interim relief submits that an accident has taken place on 22.10.2008 by Bus of U.P. State Road Transport Corporation having registration no. UP 34 C-7688 in which he was driver with Motorcycle have registration no. UP 34-L/4332 at Mishrikh, Sitapur.

4. In respect to the said accident a claim petition no.68 of 2009 and Claim Petition no. 69 of 2009 have been filed before Motor Accident Claims Tribunal/ Additional District Judge, Court no.7, Sitapur, partly allowed vide judgment and order dated 9.3.2010 and a compensation has been awarded to the tune of Rs. 2,82,000 with 6% simple interest from the date of pretension of application.

5. Learned counsel for the petitioner submits that thereafter by means of impugned order dated 30.9.2011 and 4.10.2010 passed by opposite party no.4 / Assistant Regional Manager, U.P.S.R.T.C. Sitapur, an order has been passed to recover the amount of compensation paid to the claimant in pursuance to the judgment and award dated 9.3.2010 passed by Motor Accident Claims Tribunal, Sitapur in aforesaid claim petitions on the ground that Motor Accident Claims Tribunal has

permitted the authority recover the said amount from the petitioner's salary.

6. He further submits that said order has been passed without providing any opportunity of hearing to the petitioner and further no directions has been passed by the Tribunal to recover the compensation amount awarded by means of judgment and award dated 9.3.2010 passed in aforesaid claim petitions from the salary of the petitioner.

7. Aggrieved by the said orders passed by opposite party no.4, petitioner preferred an appeal before opposite party no.3/ Regional Manager U.P.S.R.T.C., Hardoi, rejected by order dated 1.4.2010 without considering the grievance which he raised in the appeal, hence the impugned orders are totally illegal and arbitrary in nature.

8. After hearing the learned counsel for the parties and going through the material on record. prima facie it is established that the impugned recovery from the petitioner's salary vide impugned orders dated 30.9.2010 ( Annexure no.1) and 4.10.2010 ( Annexure no.2) issued by opposite party no.4 is an ex parte order and no opportunity whatsoever has been given to the petitioner prior to passing of impugned orders. Further, the same have been passed on wrong presumption and ground that by means of judgment and award dated 9.3.2010 passed by the Tribunal in Claim Petition No. 69 of 2009 and 68 of 2009 a direction has been given to the authorities of U.P.S.R.T.C. to recover the same from the salary of the petitioner.

9. In view of the above said facts, as an interim measure it is provided that no recovery shall be made in pursuance of the impugned orders which are under challenged in the instant case from the salary of the petitioner with effect from 1.11.2011 till further orders of this Court.

10. List after six weeks.