

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.17668/2012

G.Balachandran

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Petitioner

Versus

1.The Secretary to Government of Tamil Nadu
Social Welfare Department, Fort St. George
Chennai-9.

2.The District Collector
Cuddalore District, Cuddalore.

3.The Block Development Officer
Mel Buvanagiri Union
Buvanagiri Taluk, Cuddalore District.

4.The Executive Engineer
Mel Buvanagiri Union
Chidambaram Taluk, Cuddalore District.

5.Prakash

...

Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to pay a sum of Rs.5,00,000/- by way of compensation to the petitioner.

For Petitioner : Mr.M.Vijayakumar

For RR 1 and 2 : Mr.P.H.Arvind Pandiyan
Additional Advocate General
assisted by Mrs.P.Rajalakshmi
Government Advocate

For RR 3 & 4 : Mr.M.Digvijaypandian, AGP

For R5 : No appearance

ORDER

Heard Mr.M.Vijayakumar, learned counsel for the petitioner ; Mr.P.H.Arvind Pandiyan, learned Additional Advocate General appearing for the respondents 1 and 2 and Mr.Digvijaypandiyan, learned Additional Government Pleader appearing for the respondents 3 and 4 and perused the material available on record.

2.The petitioner has filed this writ petition praying for a direction upon the respondents to pay compensation of Rs.5 lakhs to compensate his daughter Subha, who was then a minor and who was injured on account of the wall built by the 5th respondent/Contractor had collapsed and fallen on the petitioner's daughter, as a result of which, she sustained fracture in her right femur and she had undergone a major surgery and the doctors have fixed a plate with screws and the type of injury sustained by her has been certified as grievous.

3.The petitioner's daughter, then aged about 13 years, was walking in the village near a hand pump which was situated near the Anganwadi building and the construction was being made by the 5th respondent who was a contractor of the 4th respondent/Panchayat Union. It appears that the wall which was constructed had collapsed and fallen on the petitioner's daughter and she sustained injury. The petitioner took her daughter for treatment to Raja Muthaiah Medical College Hospital, Annamalai Nagar and she was treated there and surgery was performed and the treatment certificate issued by the Hospital dated 08.05.2012 shows that the injury was grievous and the surgery was done on her. The petitioner would state that he lodged police complaint ; but the police refused to entertain his complaint. But, the matter was returned in a Tamil Daily "Dinamalar" dated 12.03.2012. A copy of the same has also been filed in the typed set of papers. The petitioner sought for compensation by giving a representation on 26.03.2012. Since there was no response, he sent a lawyer's notice dated 06.04.2012. Since there was no response even for the said lawyer's notice, the petitioner has filed this writ petition with the above said prayer.

4.Learned counsel for the petitioner submitted considering the nature of surgery performed on the petitioner's daughter, further surgery had to be performed to remove the plate and she has put under constant medical treatment on account of which his future prospects have also been affected. The petitioner sustained injury on account of the collapse of the wall which was being constructed by the Panchayat Union/4th respondent through its contractor/the 5th respondent herein.

5. Though the 5th respondent has been served and his name has been printed in the cause list, none appears for the 5th respondent. There is no dispute with regard to the injury sustained by the petitioner's daughter and the cause of such injury. The defence raised by the 3rd respondent in the counter affidavit is that the 5th respondent/contractor is only liable and the petitioner's daughter is not a toddler but was 13 years old then and she should have taken due care and caution. The said stand taken by the 3rd respondent is wholly unsustainable. The 3rd respondent being the Block Development Officer, is fully incharge of the Panchayat Union and the 5th respondent is only a contractor of respondents 3 and 4. Therefore, the respondents 3 and 4 are the principal employers and they cannot deny their liability. Furthermore, merely because the petitioner's daughter was then 13 years, that cannot by itself be a reason to negative the claim made by the petitioner. The respondents 1 to 4 being the functionaries of the State, are bound to take due care and caution to ensure that the developmental works are done in a safe manner without detriment to the local public. In the instant case, it appears that the 5th respondent did not take property care while constructing the wall and there was lack of proper supervision by the respondents 3 and 4. Therefore, the respondents 3 and 4 are liable to pay compensation to the petitioner which is recoverable by them from the 5th respondent who had put up the wall.

6. Since the compensation is being given based on a tortious claim, this Court cannot adjudicate as to what would be just and fair compensation payable to the petitioner's daughter since it is not a civil court which will consider the facts and circumstances placed before the Court. However, this Court considering the facts and circumstances of the case, is of the view that an adhoc compensation is payable to the petitioner.

7. Accordingly, the writ petition is partly allowed and the respondents 2 to 4 are directed to pay the petitioner a sum of Rs.3,00,000/- [Rupees Three Lakhs only] as adhoc compensation, leaving it open to the petitioner to approach the competent forum for claiming just and adequate compensation by producing records to prove his claim. The said compensation shall be paid to the petitioner and with a further direction to the petitioner to deposit the said amount in any one of the Nationalised Banks in the name of the petitioner's daughter Subha, in a Cumulative Fixed Deposit Scheme and retain as such, till the petitioner's daughter attains majority. The respondents 2 to 4 are at liberty to recover the amount directed to be paid to the petitioner, from the 5th respondent/Contractor. In the event, the petitioner seeks for any further amount, it is always open

to him to approach the competent Forum and make such claim, which shall be dealt with in accordance with law. No costs.

Sd/-
Assistant Registrar
Dated:18.2.15

True Copy

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu
Social Welfare Department, Fort St. George
Chennai-9.

2.The District Collector
Cuddalore District, Cuddalore.

3.The Block Development Officer
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Buvanagiri Taluk, Cuddalore District.

4.The Executive Engineer
Mel Buvanagiri Union
Chidambaram Taluk, Cuddalore District.

+1 cc to Mr.M.Vijayakumar, Advocate,SR.7386

+1 cc to Mr.Digvijayapandian, Advocate,SR.7023

+1 cc to Government Pleader, SR.7296.

sr(co)
krd 20/2

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