



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) No.1222 of 2015

and

M.P(MD)No.1 of 2015

1.The Government of Tamil Nadu,
Rep by the Health Secretary,
Health Department,
St., George Fort,
Chennai 600 009.

2.The Director of Medical and
Rural Health Services,
Chennai 600 006.

3.The Joint Director of Health Services,
Dindigul District, Dindigul.

4.The Government Hospital,
Palani Rep by the Medical Officer.

5.The Special Officer,
Chief Minister's Special Cell,
St., George Fort,
Chennai 600 009.

... Appellants/Respondents 1 to 5
Vs.

1.P.Vijaya ... Respondent/Petitioner

2.K.Sengoden
Government Hospital,
Palani, Dindigul District.

3.Vimala,
Maternity Assistant,
Government Hospital Udumalaipettai,
Coimbatore District.

4.Sivagami,
Nurse, Government Hospital,
Palani, Dindigul District.

5.DR.S.Packiam,
Government Hospital,
Palani, Dindigul District.

6.K.Renuga,
Nurse
Government Hospital,
Palani, Dindigul District.

... 2 to 6 Respondents/6 to 10
Respondent



Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 12.02.2013 made in W.P.(MD)No.10514 of 2006.

Prayer in WP(MD). 10514/ 2006 :

This Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st respondent to pay compensation to the petitioner for the death of her new born male baby in 4th respondent hospital on 16/04/98 due to the negligence on the part of the staff of 4th respondent hospital, which is the matter of 3rd respondents communication to the 5th respondent vide O.M.No. 587/CM/04 dated 27/01/04.

For Appellants : Mr.M.Govindan,
Special Government Pleader.

For 1st Respondent : Mrs.S.Vengalakshmi

For Respondents 2-4 : Mr.P.Chellapandian

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J)

This appeal is by the State questioning the correctness of an order passed by the learned Judge granting compensation in a sum of Rs.3 lakhs to the first respondent for the death of her new born male baby in the fourth respondent hospital, purportedly due to the negligence on the part of the staff of the fourth respondent hospital.

2.Heard Mr.M.Govindan, learned Special Government Pleader for the appellants. Mrs.S.Vengalakshmi, learned counsel takes notice for the first respondent.

3.The first respondent herein was admitted in the Government Hospital, Palani which is the fourth respondent herein on 13.04.1998 at 10.20 p.m., when she developed labour pain. According to her, the staff on duty did not bother to examine her. When the Doctor who was in charge was contacted he directed the nurses to take care. The duty nurses are said to have abused the first respondent.

4.According to the first respondent, she became unconscious at about 3.00 a.m. on 14.04.1998 and due to the draining of water in the uterus the baby could not come out. No steps were taken in 12 hours. At last, a lady Doctor by name Dr.S.Packiam who is the fifth respondent herein took the baby out. The baby died at 2.30 p.m. on 16.04.1998.

5.Therefore, complaining of negligence on the part of the Doctors of the hospital, the first respondent started making representations. Eventually, the Government woke up after four years and initiated disciplinary action against two doctors who are the respondents 2 and 5 herein as well as a nurse who is the sixth respondent herein.

6.After the conclusion of the disciplinary proceedings and the submission of the report, the first respondent came up with a writ petition in W.P(MD)No.10514 of 2006 claiming compensation in a sum of



Rs.4,60,000/-. The first respondent impleaded the other respondents also as parties to the main writ petition by taking out impleading application. All the respondents were served with notices but they did not choose to appear.

7. Thereafter, on the basis of the pleadings including the counter affidavit filed on behalf of the appellants, the learned Judge came to the conclusion that the hospital was guilty of negligence. Therefore, the learned Judge held that the first respondent was entitled to compensation.

8. However, as against the claim of Rs.4,60,000/-, the learned Judge ordered only a sum of Rs.3 lakhs. The learned Judge took note of the fact that the first respondent lost her first child during delivery in 1996 in the very same fourth respondent hospital and that this was the second occasion when she lost the second child also in the very same hospital.

9. Therefore, we do not think that the learned Judge committed any error of law. Hence, the above appeal deserves to be dismissed.

10. However, we wish to point out that in paragraph 20 of the order, the learned Judge even while directing the State Government to pay a compensation of Rs.3 lakhs to the first respondent, directed the amount to be recovered from Dr.S.Packiam who was impleaded as 9th respondent in the writ petition and who is now impleaded as fifth respondent in the writ appeal. If Dr.S.Packiam comes up with an appeal as against that portion of the order, we will independently examine it without holding the dismissal of this writ appeal against her. The appellants shall pay compensation as ordered by the learned Judge within three months. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Health Secretary,
Government of Tamil Nadu,
Health Department,
St., George Fort, Chennai 600 009.

2. The Director of Medical and
Rural Health Services, Chennai 600 006.

3. The Joint Director of Health Services,
Dindigul District, Dindigul.

4. The Medical Officer, Government Hospital, Palani



5.The Special Officer,
Chief Minister's Special Cell,
St., George Fort, Chennai 600 009.

+1cc to M/s.S.Vengalakshmi, Advocate SR.No.68723
+1cc to M/s.D.Venkatesh, Advocate SR.No.68897
+1cc to special Government Pleader SR.No.69090

sm:AA1-MPA:14.12.2015:4P/9C

Writ Appeal (MD) No.1222 of 2015
and
M.P (MD) No.1 of 2015
02.12.2015