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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal (MD) No.954 of 2015

1.The Government of Tamil Nadu
rep.by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai.

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

3.The District Collector,
Virudhunagar District,
Virudhunagar.

.. Appellants/Respondents 1 to 3

Vs.

1.R.Shanmugakani

2.Minor S.Vasanth Kumari

3.Minor S.Senthil Murugan
(RR - 2 & 3 rep. by R1)

...Respondent 1 to 3 / Petitioners

4.Dr.Alagusundarammal
Obstetric and Gynecologist
Government hospital,
Rajapalayam.

5.Dr.S.Sakthivel

6.Z.Arockiammal
Staff Nurse,
Government hospital,
Rajapalayam.

... Respondents 4to 6/Respondents 4 to 6

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.08.2014 passed in WP(MD)No.13867 of 2011 by this Court.

Prayer in WP(MD). 13867/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, directing the Respondents to pay a compensation of Rs.15,00,000/- for the death of the Ramalakshmi with reasonable interest from the date of the death or to pay any reasonable amount.

For Appellant

: Mr.M.Govindan

Spl.Govt.Pleader

For RR - 1 to 3

: Mr.R.Subramanian

For R - 4

: Mr.C.Bethanasamy



JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This writ appeal is directed against the order passed by the learned single Judge in W.P(MD)No.13867 of 2011, dated 08.08.2014.

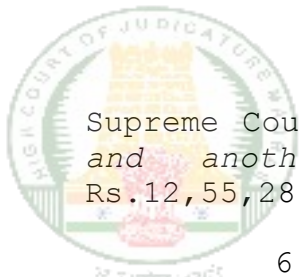
2.We do not justify the present appeal by the Government, more particularly, when the first respondent/Principal Secretary has not even chosen to file counter affidavit before the Writ Court controverting the allegations and did not care to file counter affidavit and has shown supine indifference.

3.The brief facts of the case are as follows:-

The first respondent's wife was admitted in Government Hospital, Rajapalayam on 16.03.2005 and she gave birth to a child and thereafter she was suggested to undergo family planning operation which was also done. This was on the basis of the Government initiative to propagate birth control. The Chief Medical Officer in-charge, the fourth respondent in the writ petition conducted surgery and the fifth respondent in the writ petition is the anesthetist and sixth respondent is staff nurse. After surgery, the wife of the first respondent complained of severe stomach pain. Thereafter, she shifted to Government Rajaji Hospital, Madurai on 21.03.2005 for further treatment and on 22.03.2015 at about 13.15 hours, she died in the hospital.

4.The learned Single Judge has observed in paragraph-3 of the order that postmortem certificate reveals the presence of pus and a swab pad, measuring 25x26 cm, in the abdomen and the cause of death was due to septicemia. It is therefore evident from the above fact that at the time of surgery, the respondents 4 to 6 negligently left the swab pad in the abdomen of the patient namely the deceased, wife of the first respondent/writ petitioner. The deceased was a lady tailor who was contributing some amount to the family. Consequent to this incident, Rs.2,50,000/- was given as compensation by the first appellant/first respondent. However, the first respondent/writ petitioner proceeded to seek higher compensation before the District Consumer Redressal Forum, Virudhunagar, for the negligence on the part of the Doctors in performing family planning operation which was dismissed. Against which, an appeal was filed and the same was also dismissed giving liberty to the petitioner to approach the appropriate forum. However, the petitioner has come before this Court by filing writ petition.

5.The learned Single Judge recording all the factual aspects of the surgery which resulted in the death of the wife of the first respondent/writ petitioner and also the departmental action taken against the doctors and nurse, coupled with the fact that the postmortem report clearly shows the presence of swab pad measuring 25 x 26 cm which resulted in pus and septicemia is the cause of death, held that the negligence is not in dispute and therefore, consequent to the negligence, compensation should follow. Considering the plight of the deceased illiterate lady, her husband and two minor children, instead of directing them to go to Civil Court exercising the power under Article 226 of the Constitution of India and following the decision rendered by the Hon'ble



Supreme Court in (*Sarla Verma and others Vs. Delhi Transport Corporation and another*) 2009(4) MLJ 997 (SC), ordered compensation of Rs.12,55,288/- less the amount already granted by the Government.

6.The relevant portion of the order of the learned Single Judge is extracted as under:-

"22.On the basis of the evidence on record and arriving at a categorical finding that the death had occurred due to the negligence on the part of the doctors, this Court has computed the compensation. As per the Judgment of the Hon'ble Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in III (2009) ACC 708 (SC), 50% of the actual salary should be added towards future prospects, by adopting a rule known as "Rule of Thumb", provided the deceased was below 40 years. It is not in dispute that in the case on hand, at the time of death, the deceased was hardly 23 years old. As per the decision rendered in *Sarla Verma's* case, multiplier to be adopted is 17.

23.The deceased was earning a sum of Rs.4,000/-. Having regard to the age of the deceased, salary of the deceased, family status, the other attendant circumstances and as per the calculation memo produced by the learned counsel appearing on behalf of the petitioners, this Court is of the considered view that the petitioners are entitled for a sum of Rs.12,55,000/- under the following heads:-

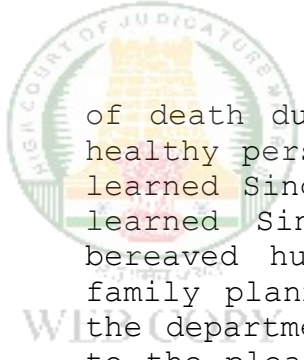
Loss of income	Rs.7,25,288/-
Loss of consortium for husband	Rs.1,00,000/-
Loss of Love and Affection for two children	Rs.2,00,000/-
Pain and sufferings	Rs.2,00,000/-
Funeral expenses	Rs.10,000/-
Loss of estate	Rs.20,000/-

Total	Rs.12,55,288/-

24.The first respondent had already sanctioned a sum of Rs.2,50,000/- in favour of the petitioners 2 and 3, vide G.O.Ms.No.81, Health and Family Welfare Department, dated 25.04.2003. Therefore, the petitioners are entitled for a compensation of a sum of Rs.10,05,000/-, which is rounded off to Rs.10,00,000/- and the same shall be paid by the first respondent, within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondents 1 to 3 to initiate appropriate proceedings against the respondents 4 to 6, so as to fix the liability, and thereafter, recover the said amount from them, after conducting a thorough enquiry".

7.Challenging the said order, the present writ appeal has been filed by the State.

8.Considering the undisputed factual scenario as held by the learned Single Judge coupled with the postmortem report showing the cause



of death due to septicemia and presence of cotton swab on an otherwise healthy person, we find no reason to interfere with the reasoning of the learned Single Judge on negligence. We therefore uphold the order of the learned Single Judge granting compensation to the first respondent, bereaved husband of the patient who went for delivery and subsequent family planning surgery which resulted in her death. The proceedings of the department against the doctors which is not in dispute adds credence to the plea of negligence by the doctors and the staff. Hence, there can be no plea of dispute on negligence.

9. Further, we find no error in order granting compensation. The plea that writ petition is not maintainable is not tenable.

10. Accordingly, the writ appeal is dismissed. No costs. Connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writ)

/TRUE COPY/

Sub Assistant Registrar

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To

1 The Principal Secretary, Health and Family Welfare Department
Fort.St. George, Chennai

2 The Director, Medical and Rural Health Services, Chennai-6

3 The Direct Collector, Virudhunagar District.

+1 cc to MR.C.KARTHIK , ADVOCATE, SR NO: 56955

+1 cc to MR.r.SUBRAMANIAN, ADVOCATE, SR NO: 56249

JAM /19.10.2015/AAL-MPA/4P-6C

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