

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.11.2016

CORAM

**THE HON'BLE MR. JUSTICE T.MATHIVANAN**

**C.R.P (PD) No.4407 of 2012**

1.Velusamy  
2.Minor.Pechiammal  
3.Minor.Selvakumar  
(Minors 2 and 3 rep. By their  
father natural guardian 1<sup>st</sup> petitioner) ... Petitioners

**Vs.**

1.Dr.Anandavidya  
2.The Medical Officer  
Corporation Hospital  
(Kurangu Seit Hospital)  
Dhamaraja Kovil Street  
Coimbatore  
3. The Dean  
Coimbatore Medical College Hospital  
Coimbatore  
4. The Director of Medical Services  
Chepauk  
Chennai  
5. The District Collector  
Coimbatore  
6. Coimbatore Corporation  
Rep. By its Commissioner  
Town Hall,  
Coimbatore ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to

set aside the order dated 18.10.2012 passed by the Principal Sub-Judge, Coimbatore refusing to record the question put to DW2 and permit the petitioner to proceed with the question.

For Petitioners : Mr.V.Shivakumar

For Respondents : Mr.J.Sathyanarayana Prasad  
for R1, R2 and R6

Special Government Pleader  
for R3 to R5

**ORDER**

Challenging the order of the learned Principal Subordinate Judge, Coimbatore dated 18.10.2012 and made in the suit in O.S.No.591 of 2010 while recording the evidence of DW2, this revision is filed by the revision petitioners, who are the plaintiffs in the suit.

2. Heard Mr.V.Sivakumar, learned counsel appearing for the revision petitioners, Mr.J.Sathyanarayana Prasad, learned counsel for respondents 1,2 and 6. Despite service of notice on the respondents 3 to 5, they have not chosen to appear. Hence, on considering the submissions made by the learned counsel for the revision petitioners and by the learned counsel for the respondent 1, 2 and 6, the following order is being made.

3. It is manifested from the records that the revision petitioners have filed

the suit in O.S.No.732 of 2007 as against the respondents and thereby sought for a direction to the respondents to pay a sum of Rs.5,50,000/- with subsequent interest till the date of payment towards the damages caused to their mother on account of surgical error (medical negligence). The suit was contested by the respondents.

4. After formulating the necessary issues, the process of recording the evidences was commenced and after the completion of recording of evidence on the part of the revision petitioners, the first defendant was put in the box and examined as DW1. During the course of her cross-examination, learned counsel who was appearing on behalf of the revision petitioners had confronted the first defendant with the question as to whether the reason of Typhoid had been stated in Ex.C3 for the death of the first revision petitioner's wife and the mother of revision petitioner's 2 and 3. Insofar as D1 is concerned, it was explained to her that on 11.05.2000, she had performed a surgery on one Eswari, who is none other the wife of the first petitioner and the mother of the petitioners 2 and 3 in respect of a family planning and during the course of the surgery she had collapsed. As per the case of the plaintiffs, the death was on account of the surgical error. While putting this question during the time of cross-examination of DW1, the learned trial Judge had refused to record this question as well as the answer with a finding that this question was extraneous and thereafter there was no improvement insofar as this case is concerned. Only at that stage, the order

of the learned trial Judge was challenged and the revision petitioners, being the plaintiffs, had chosen to file this revision petition questioning the order, which according to them, is illegal and perverse in nature.

5. This Court has perused the grounds of revision and heard Mr.V.Sivakumar, learned counsel appearing for the revision petitioners and Mr.J.Sathyanarayana Prasad, learned counsel appearing for the respondents 1, 2 and 6.

6. It is brought to the notice of this Court that Ex.C3 is the medical certificate of the deceased Easwari and the existence or non-existence of Typhoid according to them is very crucial question in the case on hand. However, the learned trial Judge had refused to record the question. Therefore, they have urged this Court to set aside the impugned order and permit the revision petitioner to proceed with the trial. Mr.Sivakumar, has also submitted that the deceased Easwari had given a normal delivery to the third child on 07.05.2000 and on 11.05.2000, DW1 had conducted a family planning surgery and due to the surgical injury on her intestine as well as on account of medical complication she had died on 16.05.2000. Therefore, for seeking compensation by way of damages, the revision petitioners have filed the above said suit. Insofar this Court is concerned, the question which was put to DW1

during the course of cross-examination is vital and very much essential and whatever be the answer, it shall have been recorded by the trial Court. However, for the reasons best known to him he had refused to record the answer.

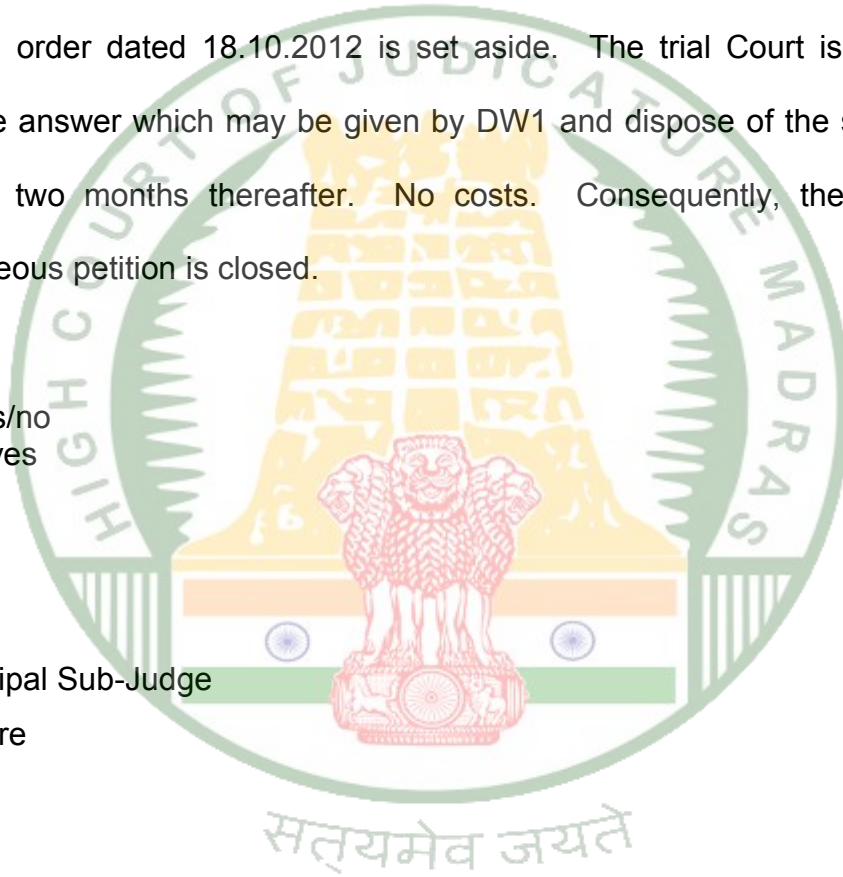
Keeping in view of the above fact, this revision petition is allowed and the impugned order dated 18.10.2012 is set aside. The trial Court is directed to record the answer which may be given by DW1 and dispose of the suit within a period of two months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

**10.11.2016**

Index: yes/no  
Internet: yes  
gpa

**To**

The Principal Sub-Judge  
Coimbatore



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**T.MATHIVANAN.J.,**

gpa



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