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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.08.2016

Delivered on : 01.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. (MD) No.4301 of 2013

and

M.P. (MD) Nos. 1 to 3 of 2013

S.Ganesan

: Petitioner

vs.

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

2.The Director,
Directorate of Medical Education,
Government of Tamil Nadu,
Chennai.

3.The Dean,
Government Nagercoil Medical College Hospital,
Asaripallam,
Kanyakumari District.

4.The Proprietor,
Falcon Air Company,
Thovalai,
Madahvilayam Extension Road,
Thovalai Taluk,
Kanyakumari District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the respondents to pay Rupees Fifty Lakhs (Rs.50,00,000/-) compensation to the petitioner, the petitioner's son and daughter for the death of the petitioner's wife Rukmani, who died on 04.05.2012 consequent to provide Nitrous Oxide instead of given oxygen in respondent No.3 hospital to the petitioner's wife at the time of conducting family planning operation on 19.03.2011.

<https://hcservices.ecourts.gov.in/hcservices/>

For Petitioner

: Mr.R.Alagumani



For Respondents 103 : Mr.Aayiram K.Selvakumar,
Government Advocate
For Respondent No.4 : Mr.C.T.Perumal

ORDER

INTRODUCTION:

The Medical Officers of Government Nagercoil Medical College Hospital administered Nitrous Oxide instead of medical oxygen to the wife of the petitioner, while she was admitted there for vasectomy, resulting in developing neurological complaints and her ultimate death in a coma condition. The deceased suffered physically and mentally for a period of 411 days in various hospitals including Madurai Government Rajaji Hospital and Christian Medical College Hospital, Vellore, solely on account of medical negligence.

SUMMARY OF FACTS:

2. The petitioner is a resident of Semponkarai in the district of Kanyakumari. He is doing coconut business. The wife of the petitioner, by name Rukmani, was a tailor by profession. She was earning not less than Rs.400/- per day by engaging herself as a lady tailor. The petitioner is having two children aged about 19 years and 18 years as on today.

3. When it was found that the wife of the petitioner conceived once again, she was taken to the Government Nagercoil Medical College Hospital for vasectomy. She was admitted there on 18.03.2011. The wife of the petitioner was taken to the operation theatre at about 10.30 a.m., on 19.03.2011. According to the petitioner, at about 11.30 hours, he noticed the doctors and nurses in a tense condition and they have been coming out from the operation theatre and going inside with tension on their face. The petitioner was informed by a subordinate staff that his wife suffered heavy blood loss. Subsequently, at about 12 noon, she was transferred to the Intensive Care Unit. The petitioner was kept in the darkness with regard to the condition of his wife or the treatment given to her. Since the Medical College Hospital kept her without giving proper treatment, the petitioner made a complaint to the Director of Medical Education, Chennai. The Director of Medical Education deputed a medical team to examine the wife of the petitioner. The hospital authorities suspended some of its employees. Subsequently, on account of the agitation by the employees, suspension orders were recalled.

4. The petitioner was informed by the Director on 12.04.2011 that the Government Nagercoil Medical College Hospital had no experts or equipments to save the life of his wife and as such, she should be taken to Madurai Government Rajaji Hospital. Accordingly, she was taken to the Madurai in a coma stage. She was given liquid



food by tube through her nose. The petitioner was made to pay the entire medical expenses. The petitioner raised money by pledging the jewels of his wife. Her weight was 65 kilograms when she was admitted in the hospital. It was reduced to 10 kilograms over a time.

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5. The petitioner preferred a complaint before the Superintendent of Police, Kanyakumari District. The police, without registering a first information report, pursuant to the said complaint, registered a case in Crime No.158 of 2011, on the basis of the complaint preferred by the Medical Superintendent of the Hospital against the suppliers of gas.

6. The petitioner filed a Writ Petition before this Court in W.P.(MD)No.7482 of 2011. Pursuant to the order passed in the said Writ Petition, his wife was transferred to Christian Medical College Hospital at Vellore. She was given treatment there. The wife of the petitioner, ultimately, died on 04 May, 2012 at Christian Medical College Hospital, Vellore.

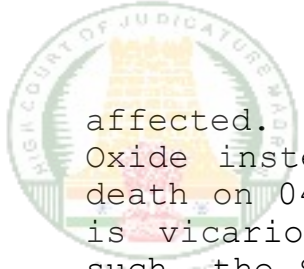
7. According to the petitioner, his wife died only on account of the negligence of the Medical Officers and supporting staff of Government Nagercoil Medical College Hospital, who were instrumental in giving Nitrous Oxide instead of medical oxygen. The petitioner lost his wife and his two children lost their mother as well as a breadwinner of the family. The petitioner, therefore, seeks a direction to the respondents 1 to 3 to pay him a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation.

8. The fourth respondent filed a counter-affidavit contending that pursuant to the request made by the third respondent, the Company supplied Nitrous Oxide by encoding as 'N2'. There was separate marking in respect of cylinders filled with Nitrous Oxide. The hospital was, therefore, not correct in saying that the fourth respondent supplied Nitrous Oxide instead of oxygen.

9. Even though sufficient time was given, the respondents 1 to 3 have not filed any counter-affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition.

SUBMISSIONS:

10. The learned counsel for the petitioner contended that it was only on account of the negligence of the hospital authorities of Government Nagercoil Medical College Hospital that the wife of the petitioner has become a vegetable. According to the learned counsel, the concerned staff of the hospital supplied Nitrous Oxide instead of oxygen and as a result, the nerve system of the patient was



affected. She became unconscious immediately after giving Nitrous Oxide instead of oxygen and the said condition continued till her death on 04 May, 2012. The learned counsel submitted that the State is vicariously liable for the negligence of its servants and as such, the State is liable to pay compensation to the petitioner and his family. The learned counsel submitted that the wife of the petitioner was earning not less than Rs.15,000/- per month. She was managing the family with her income and on account of her death, the family is put to untold difficulties. The State is, therefore, liable to pay compensation, besides reimbursement of expenses.

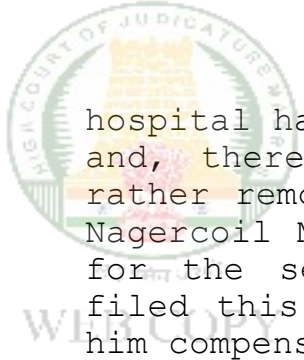
11. The learned Government Advocate appearing on behalf of the respondents 1 to 3 submitted that the Government have given best medical attention available to save the patient. The State is, therefore, not liable to pay compensation.

12. The fourth respondent submitted that the Company supplied only Nitrous Oxide in a cylinder earmarked for the said purpose with clear identifying marks. It was only on account of the negligence of the hospital staff that the incident in question took place. The complaint against the fourth respondent was made only to shift the burden of payment of compensation.

DISCUSSION:

13. The petitioner is an unskilled native labourer of Kanyakumari. His wife, by name Rukmani was doing tailoring work to maintain the family. She was admitted in Government Nagercoil Medical College Hospital on 18 March, 2011 to undergo family planning operation. While so, on 19 March, 2011, she suffered heavy blood loss and immediately at about 10.30 A.M., she was taken to the Operation Theatre. At about 12 noon, she was taken to the Intensive Care Unit in a very serious condition. She was in an unconscious condition. The Medical Officers, Nursing Staff and the Para-Medical Staff failed to disclose the factors that really contributed for the deteriorating health condition of the patient. Subsequently, the petitioner came to know that at the time of conducting family planning operation, the Medical Officers of Government Nagercoil Medical College Hospital administered Nitrous Oxide instead of Oxygen and the said negligent act resulted in heavy blood loss and neuro complaints.

14. The petitioner preferred a complaint before the Directorate of Health and on the basis of the instruction, a Medical team examined Mrs.Rukmani and thereafter, she was shifted to Madurai Government Rajaji Hospital. The wife of the petitioner was kept in the Respiratory Care Unit of Government Rajaji Hospital with effect from 12 April, 2011. Though the Dean and his team of Doctors of Government Rajaji Hospital extended their helping hand and treated the patient to the best of their ability, the fact remains that the



hospital had no adequate facilities, modern equipments and medicines and, therefore, the chance to save the life of the patient was rather remote. Since the negligence on the part of the Government Nagercoil Medical College Hospital at Kanyakumari alone contributed for the serious health condition of Mrs. Rukmani, the petitioner filed this Writ Petition directing the State of Tamil Nadu to pay him compensation.

15. This Court passed series of orders in the connected Writ Petition in W.P.(MD)No.7482 of 2011 to give better treatment to the wife of the petitioner.

16. In fact, I have passed an order in M.P.(MD)Nos.1 and 2 of 2012 in W.P.(MD)No.7482 of 2011 shifting the patient from Madurai Government Rajaji Hospital to Christian Medical College Hospital, Vellore. The said order was taken up in appeal before the Division Bench in W.A.(MD)No.117 of 2012. The Division Bench dismissed the Writ Appeal, by judgment dated 10 February, 2012. It was only thereafter, the wife of the petitioner was taken to Christian Medical College Hospital at Vellore for Expert treatment.

17. The patient was managed by Kanyakumari Medical College Hospital from 19 March, 2011 to 12 April, 2011. She was admitted in Madurai Government Rajaji Hospital on 12 April, 2011. She continued there till she was shifted to the Christian Medical College Hospital.

18. The report submitted by the Department of Neurological Sciences, Christian Medical College, Vellore shows that the patient had received Nitrous Oxide instead of oxygen during the intra-operative period. Since then, she has been unconscious and she has gradually developed posturing of all four limbs.

19. The Department of Neurological Sciences, Vellore, recorded that the deceased had undergone a tracheostomy in Kanyakumari for prolonged ventilation. She was also found to have a right lower limb deep venous thrombosis on 13th April, 2011 and was initiated on anticoagulation. At the time of presentation to the Christian Medical College Hospital, Vellore, she had no meaningful response to stimulation with posturing of all limbs with severe contractures, with a tracheostomy in situ.

20. The report submitted by Christian Medical College contains the ordeal undergone by the deceased till she was admitted in Vellore on 12 February, 2012. The report reads thus:

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"Mrs. Ruckmani was lying in bed, with tracheostomy tube in situ. She was severely emaciated. She had bed



sores at bilateral trochanteric and sacral pressure areas. The heart rate was 88/min and regular. She was breathing through the tracheostomy tube with a respiratory rate of 18 to 20 breaths per minute. The blood pressure was 90/60 mm of Hg. She had spontaneous eye movements and opening but no response to stimulation. Pupils were 4 mm bilaterally sluggishly reacting to light. There was no evidence of tracking or blinking to visual threat. There was no consistent response to auditory stimuli. There was no facial asymmetry. Painful stimuli to the limbs produced no response or occasional decorticate flexion posturing of upper limbs. The muscles were wasted and the tone was spastic bilaterally. The plantar responses were extensor. Chest was clear with bilaterally equal vesicular breath sounds. Cardiovascular examination revealed normal first and second heart sounds with no murmurs."

21. The final opinion given by the Department of Neurological Sciences would read thus:

"She was found to be in a Permanent Vegetative State as a sequel of hypoxic ischemic encephalopathy. She had evidence of relatively intact primary pathways without any evidence of awareness on assessment of the auditory, visual, somatic and motor output domains. MRI brain confirmed extensive cortical atrophy with ex-vacuo dilatation of the ventricular system. Her EEG revealed bihemispheric slow waves of the delta and theta range."

22. Though the Experts at Christian Medical College provided the best available treatment, it could not save the life of Rukmani, wife of the petitioner. She died on 04 May, 2012.

23. The State was not fair to the patient as well as to the petitioner. The order dated 01 February, 2012, in M.P.(MD)Nos.1 and 2 of 2012 in W.P.(MD)No.7482 of 2011, directing the Dean, Government Rajaji Hospital, Madurai, to shift the patient to the Christian Medical College Hospital at Vellore was not complied with by the Government initially. The order was taken up in appeal before the Division Bench in W.A.(MD)No.117 of 2012. The Division Bench disposed of the appeal, by confirming the order. The Division Bench made a clear finding with regard to the negligence suffered by the patient at Government Medical College Hospital, Nagercoil. The relevant observation reads thus:

"13. The patient has suffered at the hands of the Government Hospital Authorities, namely Government Medical College Hospital, Nagercoil due to negligence. The said



fact is not in dispute. Hence, the State is bound to give proper treatment to the patient at its costs. The learned Additional Advocate General is not disputing the fact that Dr. Mathew Alexander of Christian Medical College Hospital, Vellore, is a Neurologist of international repute."

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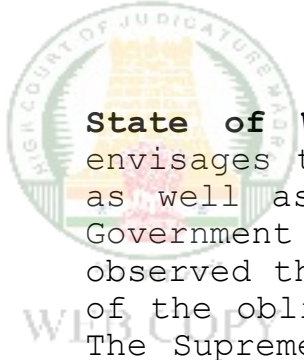
24. The judgment of the Division Bench, dated 10 February, 2012, in W.A.(MD)No.117 of 2012 has become final. The State has not challenged the finding with regard to the negligence of the staff of Government Medical College Hospital at Nagercoil. In fact, the State has not filed any counter-affidavit in this Writ Petition, disputing the version given by the petitioner with regard to negligence and the liability to pay compensation. Therefore, it is not necessary for the petitioner now to prove the negligence of the authorities at Government Medical College Hospital, Nagercoil.

25. The Supreme Court in **Achutrao Haribhau Khodwa v. State of Maharashtra [1996(2) SCC 634]**, while considering the doctrine of *res ipsa loquitur* and the vicarious liability of the Government for the negligent act of its employees, observed that running a hospital was an exercise of the State's sovereign power and as such, the State is vicariously liable in tort for the tortious acts committed by its servants. The relevant observation reads thus:

"11. The High Court observed that the Government cannot be held liable in tort for tortious acts committed in a hospital maintained by it because it considered that maintaining and running a hospital was an exercise of the State's sovereign power. We do not think that this conclusion is correct. Running a hospital is a welfare activity undertaken by the Government but it is not an exclusive function or activity of the Government so as to be classified as one which could be regarded as being in exercise of its sovereign power. In *Kasturi Lal Case* itself, in the passage which has been quoted hereinabove, this Court noticed that in pursuit of the welfare ideal the Government may enter into many commercial and other activities which have no relation to the traditional concept of governmental activity in exercise of sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where the members of the general public can come for treatment, cannot also be regarded as being an activity having a sovereign character. This being so, the State would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees."

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26. The Supreme Court in **Paschim Banga Khet Mazdoor Samity v.**



State of W.B. [1996(4) SCC 37], observed that the Constitution envisages the establishment of a welfare State at the federal level as well as at the State level and that the primary duty of the Government is to secure the welfare of the people. The Supreme Court observed that medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Supreme Court made it very clear that failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violating of his right to life guaranteed under Article 21 of the Constitution of India.

27. In **State of Maharashtra v. Kanchanmala Vijaysing Shirke [1995(5) SCC 659]**, the Supreme Court explained the scope of vicarious liability in the following words:

"Traditionally, before the court directed payment of tort compensation, the claimant had to establish the fault of the person causing injury or damage. But of late, the fault is being read as because of someone's negligence or carelessness. Same is the approach and attitude of the courts while judging the various liability of the employer for negligence of the employee. Negligence is the omission to do something which a reasonable man is expected to do or a prudent man is expected to do. Whether in the facts and circumstances of a particular case, the person causing injury to the other was negligent or not has to be examined on the materials produced before the Court. It is the rule that an employer, though guilty of no fault of himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way. The employer shall be liable for such act, because such employee was acting within the scope of his employment and in so acting did something negligent or wrongful. A master is liable even for acts which he has not authorised provided they are so connected with acts which he has been so authorised. On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside."

28. The Supreme Court in **Chameli Singh v. State of U.P. [1996 (2) SCC 549]** observed that the right guaranteed under Article 21 of the Constitution of India cannot be exercised without the basic human rights including the right to medical care. The Supreme Court



observed:

"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basis human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights....."

29. In **D.K.Basu v. State of W.B.** [AIR 1997 SC 610], the Supreme Court indicated that claim for compensation for the wrong committed was on account of principle of strict liability and as such, the principle of sovereign immunity was not available in such cases. The relevant observation would read thus:

"55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer, in the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is



lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not its derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

30. The factual matrix clearly shows that the hospital authorities have administered Nitrous Oxide to the deceased instead of oxygen. Since the servants of the third respondent were negligent and the same resulted in making the wife of the petitioner a vegetable, the State is vicariously liable. I have, therefore, no hesitation to hold that the State is bound to pay compensation to the petitioner.

ASSESSMENT OF COMPENSATION:

31. The next question relates to the determination of compensation payable to the petitioner.

32. The petitioner, in his affidavit filed in support of the Writ Petition, submitted that his wife was a tailor by profession. She was earning not less than Rs.400/- per day even in the year 2011. The said statement has not been disputed by the respondents 1 to 3.

33. As per the materials on record, the deceased was earning not less than Rs.12,000/- per month. She was an expert tailor with good prospects. She was only 34 years old.

34. The Supreme Court in **Sarla Verma vs. DTC [2009(6) SCC 121]** and **Reshma Kumari vs. Madan Mohan [2013(9) SCC 65]** observed that in case there are special circumstances, addition for future prospects can be made, even if the deceased had no permanent job.

35. The Supreme Court in **Santosh Devi vs. National Insurance Company Limited [2012(6) SCC 421]** observed that rise in the cost of living would result in revision of wages. The Supreme Court took the



example of tailor who earns livelihood by stitching cloths. The relevant observation reads thus:

"17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc."

36. In the case on hand, the deceased was a very busy tailor, committed to the profession. There is justification for addition of 30% towards future prospects.

37. The present Writ Petition is filed for awarding compensation in the public law jurisdiction to redress the wrong done by the public servants. I am, therefore, of the view that multiplier method is the most suitable method in this case to determine the compensation.

LOSS OF INCOME OF THE DECEASED:

38. Since the deceased was in the age group of 35 to 40, the applicable multiplier is '17'. The monthly income is shown as Rs.12,000/-. In case 30% is added to the actual income of the deceased for future prospects, the monthly income would come to Rs.15,600/-. Applying multiplier of 17, the amount would come to Rs.31,82,400/- (Rs.15,600 x 12 x 17). The deceased would have spent one third of her income towards her personal expenditure. After such deduction, the amount would come to Rs.21,21,600/-.

TREATMENT EXPENSES:

39. The petitioner has produced medical bills and receipts for a total sum of Rs.1,10,000/-. He is entitled to the said amount.

NON-PECUNIARY DAMAGES:

40. The petitioner is entitled to a reasonable amount for life long pain, sufferings, and loss of companionship. The deceased walked to the hospital with a smiling face for vasectomy. She was later found to be in a permanent vegetative state. She had spontaneous eye movements and opening, but no response to stimulation. The deceased had undergone the ordeal of immense pain and suffering for days and months before she breathed her last. It was all on account of the sheer carelessness and negligence of the doctors and the other concerned Hospital staff.

41. In **Arun Kumar Agrawal v. National Insurance Co. Ltd. [2010 (9) SCC 218]**, the Supreme Court indicated the heads under which the husband can claim compensation on the death of his wife. The Supreme Court observed:

"26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother



may volunteer to render some of the services to the family which the deceased was giving earlier."

42. The deceased was also a breadwinner of the family. She was functioning in different capacities. She functioned as the wife of the petitioner and mother of her two minor children. She was the Finance Minister of the family. She was the chef. She was the chartered accountant of the family in-charge of maintaining the income and expenses. The petitioner lost the company of his wife. The children of the petitioner lost their mother and her love and affection.

43. While estimating the actual loss on account of the loss of services to the family of a deceased wife, Courts have taken a view that such services should be construed broadly, taking into account the features of the life of a woman beyond her ordinary services, like house keeping, cooking, purchasing clothes to the family, washing, cleaning etc. The husband would be denied of his wife's care, attention and companionship. In short, the loss of personal care and individual attention by the deceased to her siblings, as a mother, and as a wife to her husband, are all relevant materials to assess the loss of services consequent to the death of housewife.

44. The Supreme Court in **Malay Kumar Ganguly v. Sukumar Mukherjee [2009(9) SCC 221]** underlined the contribution of wife to the family. The Supreme Court said:

"172. Loss of wife to a husband may always be truly compensated by way of monetary compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc."

45. The Supreme Court in **Balram Prasad v. Kunal Saha [2014(1) SCC 384]**, awarded a sum of Rs.10,00,000/- towards non-pecuniary loss.

<https://hcservices.courts.gov.in/hcservices/> 46. In the light of the principles laid down by the Supreme Court in **Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka [2009(6) SCC 1]** and **Balram's** case and taking into



account the economic status of the deceased, I award a sum of Rs.4,00,000/- towards "non pecuniary damages".

LOSS OF WAGES:

47. The petitioner was in the hospital to look after his wife throughout her period of treatment. The petitioner was not in a position to go for his work for a period of 411 days. Even the Division Bench permitted the petitioner and his relatives to stay with the patient. The petitioner claimed that he was earning a sum of Rs.700/- per day. Even if the income is taken as Rs.500/- per day, still it would be a sum of Rs.2,05,500/-. (Rs.500/- x 411) for a period of 411 days. The petitioner is entitled to the said amount.

COMPUTATION:

48(A) Loss of Income of the

Deceased	-	Rs.21,21,600/-
(B) Medical Expenses	-	Rs. 1,10,000/-
(C) Non-Pecuniary Damages	-	Rs. 4,00,000/-
(D) Loss of Personal Income	-	Rs. 2,05,500/-

Total	-	Rs.28,37,100/-
Rounded to	-	Rs.28,37,000/-

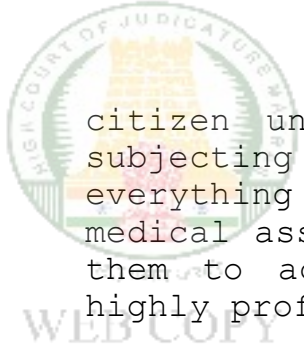
49. The doctors and para medical staff of Government Nagercoil Medical College Hospital were involved in the acts of medical negligence. The State is, therefore, vicariously liable to compensate the petitioner.

DIRECTION:

50. The first respondent is directed to pay a total sum of Rs.28,37,000/- [Rupees Twenty Eight Lakhs and Thirty Seven Thousand only] to the petitioner with interest at 9% per annum calculated from the date of initiation of the first Writ Petition in W.P.(MD) No.7482 of 2011, viz., 05 July, 2011 and cost. The amount shall be paid, within eight weeks from today. It is open to the State to recover the amount from the concerned officials after fixing liability. In any case, it is the primary liability of the State to pay compensation at the first instance.

CONCLUDING REMARKS:

51. The State has undertaken the solemn duty of providing health care to its citizen. It is a welfare activity undertaken by the Government taking inspiration from the right guaranteed to the



citizen under Article 21 of the Constitution. The patients are subjecting themselves to the doctors believing that they would do everything to save their life. The doctors have taken oath to render medical assistance to the best of their ability. The Society expect them to act with utmost responsibility and commitment and in a highly professional manner while treating patients.

It is appropriate to quote the following observation of the Supreme Court in **Balram's** case cited *supra*:

"184. The doctors, hospitals, the nursing homes and other connected establishments are to be dealt with strictly if they are found to be negligent with the patients who come to them pawning all their money with the hope to live a better life with dignity. The patients irrespective of their social, cultural and economic background are entitled to be treated with dignity which not only forms their fundamental right but also their human right. We, therefore, hope and trust that this decision acts as a deterrent and a reminder to those doctors, hospitals, the nursing homes and other connected establishments who do not take their responsibility seriously."

52. In the upshot, I allow the Writ Petition with cost quantified at Rs.33,000/- (Rupees Thirty Three Thousand only). Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

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

2.The Director,
Directorate of Medical Education,
Government of Tamil Nadu,
Chennai.



3.The Dean,
Government Nagercoil Medical College Hospital,
Asaripallam,
Kanyakumari District.

+1 cc to Mr. R.ALAGUMANI, Advocate, Sr.No: 49303

+1 cc to Mr. C.T.PERUMAL , Advocate, Sr.No: 49171

+1cc to M/S Special Government Pleader, Sr No. 50050

JAM/SKS-RR/20.09.16/ 16P-7C

Order made in
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