

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4145 of 2011

and

M.P.No.1 of 2011

S.Srinivasan

.. Petitioner

Vs.

1. The General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

2. The Assistant General Manager,
M.R.T.S.,
Mylapore,
Chennai-600 004.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to pay compensation of Rs.15,00,000/- for medical assistance and further development of the petitioner's son who fell in the gap between the Wall and floor of the M.R.T.S. Railway Station, Kotturpuram, based upon the petitioner's representation, dated 14.02.2011.

For Petitioner : Mr.S.Kumaradevan

For Respondents : Mr.Venkatesh Babu

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to pay compensation of Rs.15,00,000/- for medical assistance and further development of the petitioner's son, who fell in the gap between the Wall and floor of the M.R.T.S. Railway Station, Kotturpuram, based upon the petitioner's representation, dated 14.02.2011.

2. The petitioner who is the father of the child (son), aged about 3-1/2 years (at the time of the filing of the Writ Petition) went to Marina Beach along with his family in MRTS Electric Train and purchased four return tickets from Kotturpuram to Chennai Park Railway Station, and after visiting

the Marina Beach, they have got down from the train to go to their residence. The minor daughter of the petitioner is aged about 1-1/2 years and his son is aged about 3-1/2 years. His son met with an unfortunate accident when the children were with the parents, namely the petitioner-father and the petitioner's wife, the mother of the children. According to the petitioner, there is no proper lighting except the name board light. There was a gap between the Station Wall and the floor of the Railway Station. The said gap was about 2 feet length and a canal is situated in the open and uncompleted condition. The petitioner's son is suspected to have fallen in that gap between the wall almost 20 feet into the sewage. Search was made and the son was pulled out of the sewage water. It took more than 5 minutes before the rescue. In that rescue process, the entire body of the son was full of sewage and it was affected including his face, nose, mouth and almost all parts of the body of his son. His son was immediately admitted in Fortis Malar Hospital at Adyar with the help of neighbours. The local Rotary Club gave Rs.25,000/- and Lions Club gave Rs.25,000/- as contribution. The petitioner obtained loan from his friends and relatives. His son was in critical stage because of sewage water which had entered to his body through nose, eyes and all other parts of the body. On 12.02.2011, the hospital authorities issued a Certificate certifying that the petitioner's son, three years old, IP11-800 was admitted in Fortis Malar Hospital for near drowning, asphyxia on 30.01.2011 at 9.52 p.m. and since the child was on ventilator, Ionotopic supports and IV antibiotics and he was gradually recovering then and might require prolonged hospital stay (IMCU care).

3. According to the petitioner, the Railway authorities have not maintained the Railway Station with proper lighting facilities and had not taken preventive measures to fill up the gap along the wall of the Railway Station where the petitioner's son fell and there was not even a caution board installed therein. According to the petitioner, the Railways is completely responsible for the said incident that had happened to the petitioner's son. The petitioner is a Driver by avocation and his child's future is completely in bleak and it is for the respondents to compensate the incident that occurred to his son. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

4. The respondents have filed counter affidavit, dated 23.03.2011, taking a stand that the Writ Petition itself is not maintainable and that the section between Thirumailai and Thiruvannamiyur was commissioned for public use on 26.01.2004 by single line operation by UP line only, since the Station buildings were not completed in all respects, whereas only minimum basic amenities required for the passengers were

provided and since then, the train services are in operation and passengers were making use of the MRTS services. The section between Tirumailai and Velacherry was commissioned on 19.11.2007 and full-fledged train services were started on both lines. The section was opened to public use after getting the mandatory authorisation from the Commissioner of Railway Safety.

5. According to the respondents, before opening the section, the Commissioner of Railway Safety inspects the speed worthiness of the new track laid, the passenger amenities provided in the Station buildings and other required safety measures and this was done in Kotturpuram Railway Station also. Since MRTS is an elevated system, the platform floor has to be necessarily located in an elevated portion and the public were given with adequate entry and exit stair-cases, elevator and escalator to reach the ground floor. The MRTS alignment is traversing along the side of Buckingham Canal from Park Town Station to Thiruvannamiyur Stations. Kotturpuram Station is also located along the side of Buckingham Canal and the concourse portion of the Station building was constructed over the Canal. In the Station building area, some portion of the Canal is left open to sky for the purpose of desilting and periodical cleaning. On both the sides of the Canal, RCC retaining wall is constructed. There was a small gap of about 20 cm width between the Station building and Canal retaining wall. This area is protected with stainless steel hand-rail on the entrance of the Station for safe passage of commuters from outside the Station building to inside and vice-versa.

6. It is further stated in the counter that the passengers are provided with guided pathway for entry and exit for the Station building. If the petitioner had followed the guided pathway, the mishap would not have occurred. Though the Station was put into use from January 2004, till date, there was not even a single report of this kind of incident that had occurred. The entry and exit points were well protected with stainless steel hand-rails on both sides to prevent the passengers going beyond that area and the area where the incident happened, is outside the Station building and well away from the guided pathway and the petitioner is not supposed to go that place. It is further stated that the copy of the representation, addressed to the General Manager, Southern Railway, by the petitioner was received on 19.02.2011.

7. It is further alleged in the counter affidavit that the petitioner had failed to follow the guided pathway, which clearly proves the petitioner's own negligence, which was the immediate cause for the incident. Only because of the petitioner's contributory negligence, the petitioner's son sustained injury and all consequences. No negligence can be

attributed on the part of the Railways, since necessary steps have been taken to protect the safety of the travelling public by providing stainless steel hand-rails on both sides of the entrance of the Station to prevent the passengers from going beyond that area. The petitioner cannot recover any compensation as he himself contributed to the negligence. The Railways are no way negligent and not liable to pay the compensation or medical expenses.

8. Heard both sides and perused the materials available on record.

9. From the counter affidavit of the respondents, it is clear that there is a small gap of about 20 cm width between the Station building and Canal retaining wall. The contention of the Railways that they are not at all responsible for negligence, cannot be accepted. Similarly, the contention of the petitioner that the entire fault is on the part of the Railways, cannot also be accepted. There appears to be contributory negligence on the part of both parties. It is the duty of the parents to take care of the children, more particularly when the children are in the playful tender age, as the children may try to leave the hands of the parents and run away public. That cannot be a ground for rejecting the plea of the petitioner, more particularly when there is a gap between the Station building and the Canal retaining wall, which has been admitted in the counter affidavit.

10. The safety of the passengers should be given utmost care by the Railways. The Railways must be vigilant enough in maintaining the Stations and its precincts with regard to the usage of the same while the passengers ingress or egress the Station. Equally, the passengers should also be careful, especially when they travel with children. Just compensation is adequate compensation, which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong committed by either party. The compensation is not intended to be a bonanza or largesse or a bounty. Assessment of compensation, though involving certain hypothetical considerations, should nevertheless be objective, and justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication and fairness and uniformity in the decision making process and the decisions.

11. With regard to the aspect of negligence, it is to be noted that the negligence always does not mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances

justly demand, whereby such other person suffers injury. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether the negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. The crucial question on which the liability depends on contributory negligence, would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. Where an accident is due to negligence of both parties, substantially, there would be contributory negligence and both would be blamed. It is well settled that in the case of contributory negligence, Courts have power to apportion the loss between the parties as seems just and equitable.

12. All the above principles are reiterated by the Supreme Court in a catena of decisions while awarding the compensation for the accident victims. There can be no hard and fast rule in determining the compensation to be paid to the poor victims, given the facts of each case.

13. During the pendency of the Writ Petition, a sum of Rs.1,00,000/- was directed to be paid to the petitioner as compensation in order to meet out the medical expenses. From the records produced by the petitioner, it is seen that the total medical expenses incurred by the petitioner was about Rs.2,10,000/-. Prima-facie, it appears that there is contributory negligence of both parties and this will not disentitle the petitioner to get a reasonable amount of compensation.

14. Accordingly, the Writ Petition is disposed of, with the following directions:

(i) The first respondent is directed to pay a compensation of Rs.5,00,000/- (Rupees five lakhs only), and medical expenses of Rs.2,10,000/-.

(ii) Out of the medical expenses of Rs.2,10,000/- being spent for the child, the petitioner was stated to have been paid Rs.1,00,000/- by way of interim order pending the Writ Petition for the immediate medical expenses and hence, the petitioner is entitled to remaining medical expenses of Rs.1,10,000/-.

(iii) Thus, now the petitioner is entitled for compensation at Rs.6,10,000/- (Rs.5,00,000/- plus remaining medical expenses of Rs.1,10,000/-).

(iv) It is made clear that the amount of Rs.1,00,000/- already ordered by way of interim order pending this Writ Petition, will not carry any interest and the remaining amount of Rs.6,10,000/- will carry interest at the rate of 6% per annum from the date of accident till the date of actual payment of the same.

(v) The balance amount of compensation of Rs.6,10,000/- including the above said interest, shall be paid within a period of one month from the date of receipt of a copy of this order.

(vi) Since the petitioner's son is minor, it is directed that Rs.3,50,000/- together with interest @ 6% per annum thereon, from the date of the accident till the date of actual payment, shall be deposited by the first respondent in the name of the son of the petitioner in an interest-bearing fixed deposit scheme in any one of the nationalised Bank and interest accrued thereon shall be paid to the petitioner once in three months for the welfare of his son. The remaining amount of Rs.2,60,000/- together with interest @ 6% per annum thereon from the date of accident till the date of actual payment, shall be paid by the first respondent to the petitioner.

(vii) On failure of payment of the above said amount of Rs.6,10,000/- within the time stipulated above, it will carry interest @ 12% per annum from the date of accident till the date of actual payment. The penal interest portion at 6% shall be recovered from the person who is responsible for taking steps to pay such amount to the claimant within the time stipulated.

No costs. The Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

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To

1. The General Manager,
Southern Railway,
Park Town, Chennai-600 003.

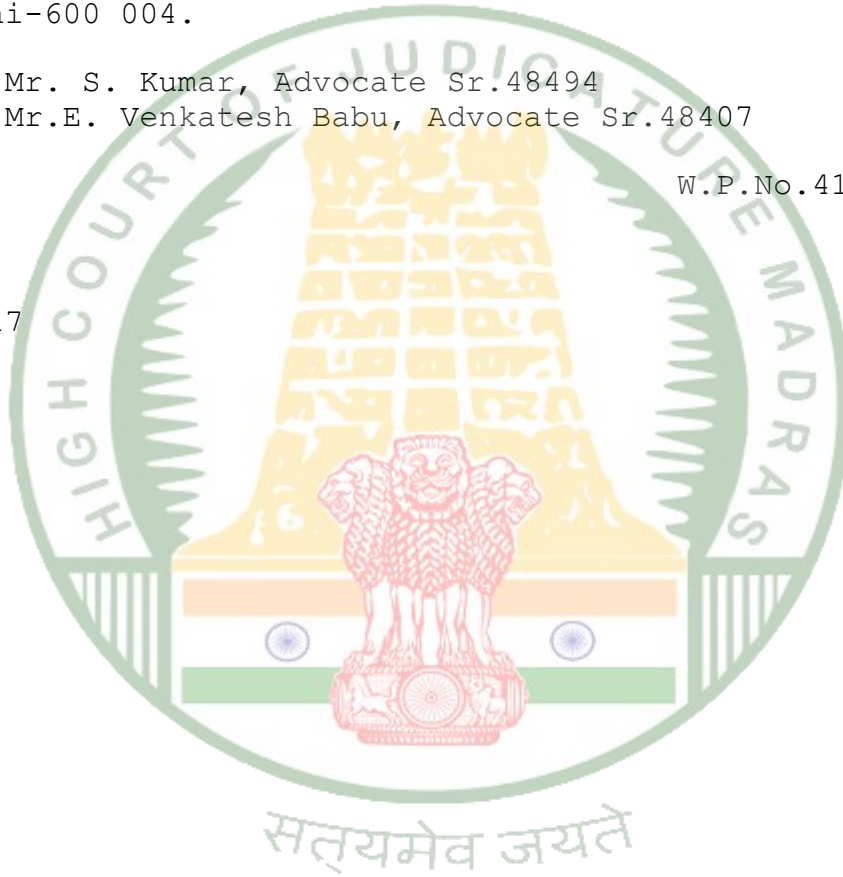
2. The Assistant General Manager,
M.R.T.S.,
Mylapore,
Chennai-600 004.

+ 1 cc to Mr. S. Kumar, Advocate Sr.48494

+ 1 cc to Mr.E. Venkatesh Babu, Advocate Sr.48407

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SR(CO)
EU 17.08.17



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