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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:10.11.2017

Delivered on: 30.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.A.(MD)Nos.724 of 2015 and 1441 of 2016
and
M.P(MD)No.1 of 2015
and
C.M.P(MD)No.10964 of 2016

W.A(MD)No.724 of 2015:

The Commissioner,
Corporation of Madurai,
Madurai.

: Appellant/5th Respondent

Vs.

1. G.Ravindran : 1st Respondent/Writ Petitioner
2. The State of Tamil Nadu,
Rep. by its Secretary,
Education, Science and Technology Department,
Fort St. George, Chennai.
3. The Secretary,
Tamil Nadu Sports Development Corporation,
Chennai.
4. The Director of School Education,
College Road, Nungambakkam,
Chennai - 600 006.
5. The District Collector,
Madurai District,
Madurai.
6. The Revenue Divisional Officer,
Madurai North, Madurai.
7. The Tahsildar,
Madurai North,
Madurai.



8. The Correspondent,
Seventh Day Adventist Matriculation School,
Ellis Nagar, Madurai.

9. The Principal,
Seventh Day Adventist Matriculation School,
Ellis Nagar,
Madurai.

: Respondents 2 to 9/Respondents 1 to 4 and 6 to 9

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P(MD)No.10045 of 2009 dated 15.04.2015.

Prayer in WP(MD)No.10045/2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, or any other appropriate order or direction in the nature of writ, directing the respondents to pay compensation to the petitioner for the death of his son Ashwin Ram due to the negligence acts on the part of the respondents.

For Appellant	: Mr.R.Murali
For R-1	: M/s.J.Anandhavalli
For R-2 to R-7	: Mr.V.R.Shanmuganathan, Special Government Pleader
For R-8 & R-9	: Mr.VR.Venkatesan

W.A(MD)No.1441 of 2016:

1. The Correspondent,
Seventh Day Adventist Matriculation School,
Ellis Nagar,
Madurai.

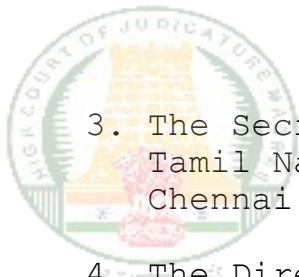
2. The Principal,
Seventh Day Adventist Matriculation School,
Ellis Nagar,
Madurai.

: Appellants/Respondents 8 & 9

Vs.

1. G.Ravindran

2. The State of Tamil Nadu,
Rep. by its Secretary,
Education Science and Technology Department,
Fort St. George,
Chennai - 600 009.



3. The Secretary,
Tamil Nadu Sports Development Corporation,
Chennai.

4. The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600006.

5. The District Collector,
Madurai District,
Madurai.

6. The Commissioner,
Corporation of Madurai,
Madurai.

7. The Revenue Divisional Officer,
Madurai.

8. The Tahsildar,
Madurai North,
Madurai.

: Respondents 2 to 8/Respondents 1 to 7

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 15.04.2015 passed in W.P(MD)No.10045 of 2009 and consequently, allow the Writ Appeal.

For Appellants	: Mr.V.R.Venkatesan
For R-1	: M/s.J.Anandhavalli
For R-2 to R-5, R-7 & R-8	: Mr.V.R.Shanmuganathan, Special Government Pleader
For R-6	: Mr.R.Murali

COMMON JUDGMENT

[Judgment of the Court was made by M.VENUGOPAL.,J.]

Since the issue involved in both the Writ Appeals are one and the same, these Writ Appeals are disposed of, by this common Judgment.

2. Heard both sides.

Preamble:

3. The Appellant in W.A(MD)No.724 of 2015/Fifth Respondent and the Appellants in W.A(MD)No.1441 of 2016/Respondent Nos.8 and 9, have preferred the present Writ Appeals as against the order dated 15.04.2015 in W.P(MD)No.10045 of 2009 passed by the Learned Single Judge.



4. Earlier, the Learned Single Judge while passing the order in W.P(MD)No.10045 of 2009 dated 15.04.2015 (filed by the First Respondent as Writ Petitioner), at Paragraph Nos.21 & 22 had observed as follows:

"21.The Swimming Pool is maintained by the fifth respondent. Admittedly, there was no security guard, instructor and care-taker. Like the Petitioner's son, other students were allowed to enter the area of Swimming Pool without any escort or care-taker. The fifth respondent is negligent and failed to provide sufficient safeguards and protect the persons, who use the Swimming Pool.

22.From the above facts, it is clear that the respondents 5, 8 and 9 were negligent, which resulted in the death of the petitioner's son at an early age. Therefore, the respondents 5, 8 and 9 are liable to pay compensation to the petitioner."

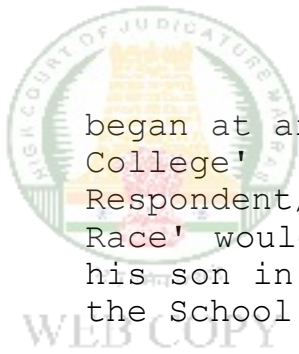
5. In the above said order, the Learned Single Judge, ultimately directed Respondent Nos.5, 8 and 9 therein (Appellant in W.A(MD)No.724 of 2015 and the Appellants in W.A(MD)No.1441 of 2016) to pay equally the compensation sum of Rs.9,60,000/- ie., Rs.4,80,000 by the Fifth Respondent(Appellant in W.A(MD)No.724 of 2015 and Rs.4,80,000/- by Respondent Nos.8 and 9 (Appellants in W.A(MD)No.1441 of 2016), within a period of twelve weeks from the date of receipt of a copy of the order. Further, the Learned Single Judge has also proceeded to observe that if the Appellants (R-5, R-8 and R-9 in the Writ Petition) fail to pay the amount within the time limit fixed, the compensation amount shall carry interest at 7% per annum, from the date of incident ie., from 22.01.2009 till the date of payment in full.

6. Being dissatisfied with the order dated 15.04.2015 passed by the Learned Single Judge in W.P(MD)No.10045 of 2009, the Appellants have preferred the present Writ Appeals.

The Resume of Germane Writ Facts:

7. It is averred by the the First Respondent/Writ Petitioner in the affidavit of the Writ Petition that his son Aswin Ram was a student from I standard to V standard in Sri Maha Matriculation School, Thathaneri Main Raod, Madurai between 1999 and 2005. On 05.05.2005, he was admitted in VI standard 'E' Section, in the Appellants'/Respondent Nos.8 & 9's School. The above said student was a very studious boy and his conduct was good. The First Respondent's son friends used to call the latter by the nick name 'Scientist'.

8. It is further averred that on 22.01.2009, 'Marathon Race' was conducted by Respondent Nos.8 and 9 and the students from VI to IX standard. Each school took part in the said 'Marathon Race'. Further, Respondent Nos.8 and 9, had directed his son to come and assemble at the entrance of Fathima College and the 'Marathon Race'



began at around 7.00 a.m., and the 'Marathon Race' was from 'Fathima College' to 'Tallakulam'. It is the case of the First Respondent/Writ Petitioner that he was informed that the 'Marathon Race' would come to an end at 9.30 a.m., and therefore, he dropped his son in the said place on 22.01.2009 at 6.15 a.m., as directed by the School Authorities and went to his job.

9. Moreover, the First Respondent/Writ Petitioner was informed by the Teachers, when he left his son that the 'Marathon Race' would be over by 9.00 a.m., and the students would be taken back to the School and they would be issued with 'Participation Certificate'. As such, he was under the impression that after completion of 'Marathon Race', the School would take care of the Students by taking them to School.

10. The First Respondent/Writ Petitioner in the Writ Petition had proceeded to state that inasmuch as the information furnished to him when he left his son in the School prior to 'Marathon Race', was not followed by the School Authorities and after the completion of 'Marathon Race', his son Aswin Ram along with 15 or 16 friends went to the Swimming Pool, which is under the control and maintenance of Fifth Respondent/Corporation(Appellant in W.A(MD)No.724 of 2015) wherein neither a Security Guard or Swimming Instructor nor anyone available to advise the children how to act in the Swimming Pool. Further, around 11.45 a.m., he came to know from the School that he has to come immediately to the Government Hospital, Madurai and when he went there, he was shocked to see that his son was 'dead' as he drowned in the Swimming Pool. Except the news of 'Death' of his son, which was heard by him, he was under dark as to what happened between 7.00 a.m., and 10.30 a.m. In short, he only heard the news of his son's death when he reached the Hospital. After registration of F.I.R and after conducting post-mortem, the body of his son was given to him.

11. The First Respondent/Writ Petitioner at Paragraph No.7 of the Writ Petition had averred that because of the negligence on the part of the Respondents, he had lost his only son at the age of 14 years. Also that, there was total negligence on the part of the Fifth Respondent(Appellant in W.A(MD)No.724 of 2015) in not taking any safety measures not even a Security Guard either near the Swimming Pool or in the office of the Swimming Pool. Therefore, he has filed the present Writ Petition seeking compensation from the Respondents for the death of his son Aswin Ram, due to the negligent act of the Respondents.

The Salient Counter averments of Respondent No.5(Appellant in W.A(MD)No.724 of 2015):

12. Before the Writ Court, the Appellant in W.A(MD)No.724 of 2015/Commissioner, Corporation of Madurai, had filed a counter-affidavit stating that the Corporation is not

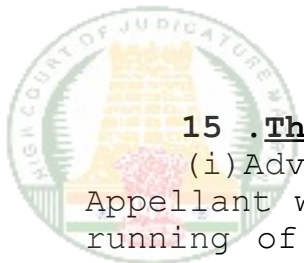


responsible for the death of the First Respondent/Petitioner's son and on the other hand, the School Authorities are alone responsible for the fateful incident. In fact, the Corporation is maintaining the Swimming Pool properly and that apart, those who come to the Swimming Pool are to come with a proper Care-taker. The Writ Petitioner cannot maintain the present Writ Petition seeking maintenance. Because, the minimum requirement for claiming the relief of maintenance, there must be a representation. Also that, the First Respondent/Writ Petitioner was not in the scene of occurrence and also that, he had not made any specific allegations against the Corporation in regard to the improper maintenance of the Swimming Pool.

13. Since the First Respondent/Writ Petitioner had left his son on 22.01.2009 at 6.15 a.m., with the Teachers of Respondent Nos.8 and 9 (Appellants in W.A(MD)No.1441 of 2016), the School Management alone is responsible for the death of the Petitioner's son and not the Madurai Corporation. The First Respondent/Writ Petitioner in the Writ Petition had raised the disputed question of facts/which cannot be determined in a Writ Petition under Article 226 of the Constitution of India. Continuing further, the First Respondent/Petitioner in the Writ Petition had not averred that whether his son was knowing swimming or otherwise.

Gist of Counter averments of Respondent Nos.8 & 9(Appellants in W.A(MD)No.1441 of 2016):

14. In the counter affidavit of R-8 and R-9 to the Writ Petition (Appellants in W.A(MD)No.1441 of 2016), at Paragraph No.5, it has been stated that the starting place was determined by the Dhanam Trust at Fathima College and the destination was also fixed at Gandhi Museum(Tallakulam). Since the 'Marathon Race' was conducted by a private person and the parents were instructed by all the schools including Respondent Nos.8 and 9's school/Appellants in WA(MD)No.1441of 2016, to take back the students after the 'Marathon Race' was over and therefore, it is the duty of the parents to come to the spot and take back the children. The First Respondent/Writ Petitioner(father of the student) never asked Respondent Nos.8 and 9 to take care of his son and the students had participated in the 'Marathon Race' at their own choice. Also that, Respondent Nos.8 and 9/Appellants in W.A(MD)No.1441 of 2016 took a plea that 'Amateurs' must be allowed to enter the Swimming Pool only under the watchful eyes of an Instructor and when anyone enter into the Swimming Pool to swim, the duty is cast upon the concerned Authority/in-charge to monitor the Swimming Pool to safeguard all the Amateur Swimmers and they are responsible for any untoward incident that occurred inside the Swimming Pool. There is no justification on the part of the First Respondent/Writ Petitioner to make the School liable for the unfortunate incident, in which the School lost its student and therefore, it has a sympathy towards the occurrence.

**15 .The Appellant's contention in W.A(MD)No.724 of 2015:**

(i) Advancing his arguments, the Learned Counsel for the Appellant would contend that the Learned Judge should have seen that running of Swimming Pool was licensed in favour of M/s. Foundation of Occupational Development (Food), 'C' Block, II Floor, Bharathiyar Complex, 100 Feet Road, Vadapalani, Chennai - 600 026 and that, Madurai Corporation was not directly running the Swimming Pool during the material time and as such, filing of Writ Petition by the First Respondent without arraying the said licensee also as a party was not correct.

(ii) The Learned Counsel for the Appellant takes a stand that the First Respondent/Petitioner's son was a minor and he was not an earning member at the time of the occurrence and as such, the question of fixing the notional income would not arise.

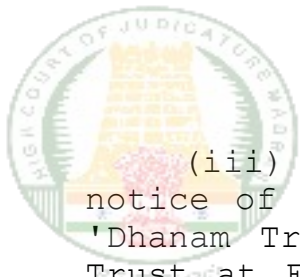
(iii) Expatiating his submissions, the Learned Counsel for the Appellant proceeds to point out that the award of Rs.9,60,000/- as compensation to the First Respondent/Writ Petitioner, is unsustainable in the eye of Law, because of the reason that no liability can be saddled on the Appellant/Madurai Corporation, based on the facts and circumstances of the present case.

(iv) Lastly, it is the stand of the Appellant that the liability imposed by the Learned Single Judge in the Writ Petition on the part of the Appellant/Madurai Corporation, cannot be put on par with that of the School Authorities. In fact, it is projected on the side of the Appellant that the School Authorities with whom the custody of the child was entrusted, had to share the major portion of the liability.

16.The Appellants' submissions in W.A(MD)No.1441 of 2016:

(i) The Learned Counsel for the Appellants/Respondent Nos.8 and 9 contends that the Learned Single Judge had arrived at a compensation sum of Rs.9,60,000/- by adopting 'Multiplier Method' and in fact, the Appellants were directed to pay a sum of Rs.4,80,000/- and the calculation to be adopted in the Motor Accident Claims Case cannot be pressed into service in the present case.

(ii) The Learned Counsel for the Appellants emphatically projects an arguments that the several judgment relied on by the Learned Single Judge in the Writ Petition are all cases where the occurrence took place inside the School and in some of the cases, the events were conducted either by the School or by the Statutory Authority. However, in the present case on hand, the Appellants had categorically stated that the 'Marathon Race' was not conducted either by the School Authority or by any statutory Authority. As such, holding the Appellants' Private school as responsible for the occurrence that took place in the 'Marathon Race' conducted by an Outside Source/Dhanam Trust, is an incorrect one.



(iii) The Learned Counsel for the Appellants brings it to the notice of this Court that the 'Marathon Race' was conducted by one 'Dhanam Trust' and the starting place was also fixed by the said Trust at Fathima College and at the relevant point of time, there were several participants including the students from various schools, who gathered at Fathima College on 22.01.2009. In short, the stand of the Appellants is that the students from various schools had voluntarily participated in the Marathon Race. As a matter of fact, more than 5000 individuals took part in the Marathon Race held on 22.01.2009 including the students and 'Public at Large'.

(iv) The Learned Counsel for the Appellants adverts to the fact that the starting place and the destination were fixed by the 'Dhanam Trust', which conducted the Race and the Appellants's School is nowhere concerned with the choice of the individual student.

(v) The Appellants's case is that they had not directed the students to assemble at Fathima College on the date of Marathon ie., on 22.01.2009 and nowhere in the counter affidavit filed before the Writ Court, the School had stated that the School would take care of the students by taking them to school.

(vi) Also, there is no evidence to point out that either the School Authority or the Physical Education Teacher of the School had directed the students to assemble at Fathima College and the students were not accompanied by any Teacher. Moreover, the parents were instructed by all the schools (including the Appellants' School) to take back the students after the events was over and that apart, the First Respondent/Writ Petitioner himself was under the impression that after the 'Marathon Race' was over, the School will take care of the students by taking them to School. However, the said information given to him was a false one.

(vii) The Learned Counsel for the Appellants further submits that the First Respondent/Writ Petitioner's averred in the Writ Petition that the School Teachers were present at the time of 'Marathon Race', was a false one. Apart from that, since the 'Marathon Race' was conducted by Private Person, the Parents were instructed by all the Schools(including the Appellants' School) to take back the students after the Marathon Race was over and therefore, it is the plea of the Appellants that the Teachers were not present either at the starting place or at the finishing place. Besides this, the Pamphlet issued by the 'Dhanam Trust' reveals that the Trust only fixed the date and time of 'Marathon Race' on 22.01.2009.

(viii) The Learned Counsel for the Appellants strenuously contends that the general instructions given by all the Schools could not be construed to draw an inference that the Officials of the Appellants/Respondent Nos.8 and 9 had accompanied the students.



(ix) While winding up, the Learned Counsel for the Appellants submitted that the Appellants/Respondent Nos.8 and 9 are not responsible for the accident/occurrence that took place during the 'Marathon Race' conducted by the private person viz., 'Dhanam Trust'.

The First Respondent's submissions in both the Writ Appeals :

17. The Learned Counsel for the First Respondent (in both the Writ Appeals)/Writ Petitioner, vehemently submits that the Learned Single Judge had rightly observed in the impugned order of the Writ Petition at Paragraph No.21 that there was no Security Guard, Instructor and Care-Taker pertaining to the Swimming Pool maintained by the Madurai Corporation (Appellant in W.A(MD)No.724 of 2015). Furthermore, it is the contention of the Learned Counsel for R-1 that like the First Respondent/Writ Petitioner's son, other students had entered into the Swimming Pool area, without the aid of Care-Taker or any Escort and therefore, the Learned Single Judge Had rightly came to the conclusion that the Madurai Corporation (Appellant in W.A(MD)No.724 of 2015)) was negligent and consequently, failed to provide adequate Safeguards and protection to the users of Swimming Pool.

18. In substance, the plea taken on behalf of the First Respondent is that the impugned order of the Learned Single Judge dated 15.04.2015 in W.P(MD)No.10045 of 2009, in directing the Madurai Corporation (Appellant in W.A(MD)No.724 of 2015) and the School Authorities (Appellants in W.A(MD)Nos.1441 of 2016) to pay the compensation amount in equal proportions namely Rs.4,80,000/- and Rs.4,80,000/-, within the time prescribed etc., does not suffer from any legal infirmities.

19. The Learned Counsel for the First Respondent cited the decision of the Honourable Supreme Court in **Lata Wadhwa and Others v. State of Bihar and Others** reported in (2001) 8 SCC, at page No.197, at Special Page No.198, wherein it is observed as under:

"So far as the determination of compensation in death cases is concerned, apart from the three decisions of the Andra Pradesh High Court, the Supreme Court in the case of G.M.,Kerala SRTC v. Susamma Thomas exhaustively observed:

"The multiplier method is logically sound and legally well-established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional



cases."

In view of the authoritative pronouncement of the Supreme Court in that case and having regard to the determination made in the Report by Shri Justice Chandraschud on the basis of the multiplier method, it is difficult to accept the contention that the settled principle for determination of compensation had not been followed in the present case. The further submission that the determination made was arbitrary, is also devoid of any substance, as Shri Justice Chandrachud has correctly applied the multiplier, on consideration of all the relevant factors. Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way as prospective loss of earnings. The basic figure, instead of being the net earnings, is the net contribution to the support of the dependants, which would have been derived from the future income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiplier has to be determined (a number of years' purchase), which will reduce the total loss to its present value, taking into account the proved risks of rise or fall in the income.

Shri Justice Chandrachud, has correctly arrived at the basic figure as well as in applying the proper multiplier, so far as the employees of TISCO are concerned, but the addition of a conventional figure to the tune of Rs.25,000 appears to be inadequate and instead, the conventional figure to be added should be Rs.50,000."

20. The Learned Counsel for the First Respondent seeks in aid of the decision of the Honourable Supreme Court in **M.S.Grewal and Another v. Deep Chand Sood and Others** reported in (2001) 8 SCC, at Page No.151, at Special Page No.153, wherein it is observed as under:

"Compensation or damages cannot be awarded as a solatium but are to be assessed with reference to loss of pecuniary benefits.

C.K.Subramania Iyer v. T.Kunhikuttan Nair, (1969) 3 SCC 64; *Franklin v. South Eastern Rly, Co.*, 157 ER 448 : (1858) 3 H&N 211; *Taff Vale Rly. Co. v. Jenkins*, 1913 AC 1 : 82 LJKB 49 : 107 LT 564 (HL), relied on

In assessing damages, all relevant materials should and ought always to be placed before the court so as to enable the court to come to a conclusion in the matter of



affection of pecuniary benefit by reasons of the unfortunate death. Though mathematical nicety is not required but a rough and ready estimate can be had from the records claiming damages since award of damages cannot be had without any material evidence: whereas one party is to be compensated, the other party is to compensate and as such there must always be some materials available therefor. It is not a fanciful item of compensation but it is on legitimate expectation of loss of pecuniary benefits."

and also, in the aforesaid decision at Special Page No.155, it is laid down as follows:

"As regards the quantum of compensation, the adaptability of the multiplier method and its acceptability without any exception cannot just be given a go-by. The Supreme Court in several earlier cases accepted and applied the multiplier method to decide the question of compensation in the cases arising out of the Motor Vehicles Act. The decision in Lata Wadhwa case is definitely a guiding factor in the matter of award of compensation."

21. The Learned Counsel for the First Respondent cites the order of the Learned Single Judge dated 28.02.2014 in **W.P.No.61 of 2009 (between D.Narayanasamy v. The District Collector, Tiruvarur and three others)** wherein at Paragraph Nos.47 to 51, it is observed as under:

"47. Therefore, it is clear that contributory negligence cannot be attributed to children. It is true that the law as it developed in England recognises a distinction between children of tender years and adolescents, who are in a position to know and understand things. In *Phipps vs. Rochester Corporation* {1955 (1) All.E.R.129}, Devlin, J., observed, "the law recognises a sharp difference between children and adults. But there might well, I think, be an equally well marked distinction between 'big children' and 'little children'."

48. In *Gough vs. Thorne* {1966 (3) All.E.R.398}, Lord Denning observed, "a very young child cannot be guilty of contributory negligence". Issuing a note of caution, Lord Denning went on to say: "a Judge should only find a child guilty of contributory negligence if he or she is of such an age as reasonably to be expected to take precautions for his or her own safety; and then he or she is only to be found guilty, if blame should be attached to him or her. He or she is not to



be found guilty unless he or she is blameworthy". In the same case, Lord Justice Salmon indicated that the test to be applied is that of "an ordinary child". It is not a child which is a paragon of prudence or a scatter brained child.

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49. Elaborating on the above test, Justice Owen said in *McHale vs. Watson* {1996 115 CLR 199}, that "the standard by which a child's conduct is to be measured is not that to be expected of a reasonable adult, but that reasonably to be expected of a child of the same age, intelligence and experience". The said test was applied again in *Toropdar vs. D* {2009 EWHC 2997}, by Justice Clarkle.

50. In so far as India is concerned, the test to be applied should be of a much higher degree. There is a sharp divide in India between (i) urban children and rural children, (ii) children belonging to the higher echelons of society and lower echelons of society and (iii) children of the haves and the have nots. Though the degree of native intelligence may more or less be the same, the degree of awareness and knowledge about the useful or harmful effects of machines and equipments varies in children, from place to place and from strata to strata.

51. Keeping the above distinction in mind, if we look at the facts of the present case, it will be clear that the petitioner's son did not go alone, but went along with his friends to the place where the accident happened. The exact manner in which the accident happened and the question as to whether there was an explosion and the question as to whether the petitioner's son actually meddled with the machine, are not really borne out by the records. But the fact that the petitioner's son went along with the other children, would go to show that he cannot be singled out and blamed for a conduct as though it was not expected a minor of that age. In such circumstances, I am of the opinion on question No.2 that the petitioner's son cannot be charged of contributory negligence."

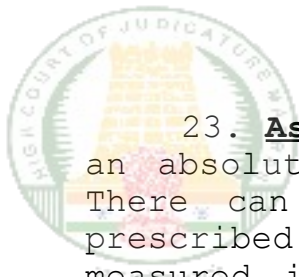
22. Besides the above, in the aforesaid report, at Paragraph Nos.59 & 60, it is observed as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 59. In *Organo Chemical Industries vs. Union of India* {1979 (4) SCC 573}, in paragraph 38, the Supreme Court held as follows:-



"38. What do we mean by 'damages'? The expression 'damages' is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by wrongdoing of another, (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, 'exemplary damages' are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behaviour or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money"."

60. Putting an end to speculation and prophecy in the matter of determination of compensation, Section 163 A and the Second Schedule were inserted to the Motor Vehicles Act, 1988, by Amendment Act 54 of 1994. The Second Schedule prescribes multipliers, as well as the amounts that could be awarded under different heads. In *M.S. Grewal vs. Deep Chand Sood* {2001 (8) SCC 151}, the Supreme Court even while following the law laid down in *C.K. Subramania Iyer* as laying down the basic guidance for assessment of damage, came to the conclusion that the multiplier method stands accepted by the Apex Court in its previous decisions."



23. **Aspect of Negligence:** In fact, the term 'Negligence' is not an absolute term, but it a comparative term and a relative one. There can be no arithmetical exactitude formula, which can be prescribed by which 'Negligence' or lack of it can be infallibly measured in a given case. The aspect of 'Negligence' and what constitutes 'Negligence', may vary based on the different conditions and in deciding whether there exists 'Negligence' in a given case or whether a course of conduct or a sheer act amounts to 'Negligence', all the surrounding facts and circumstances of a given case are to be taken into account in a complete and comprehensive fashion.

24. The omission to do what the Law obligates or even the failure to do anything in a particular method or manner envisaged by Law would equally constitute 'Negligence' on the part of such person. To put it precisely, 'Negligence' is a failure to observe or protect interest of another person, the degree of care, precaution and vigilance, which the circumstances fairly demand, whereby any other person suffers injury. 'Negligence' subjectively is nothing but a careless state of mind or in an objective manner, it can be termed as a careless conduct.

25. As a matter of fact, in the term 'Negligence' there ought to be a legal duty to exercise due care on the part of a person complained of towards the person complaining the former's conduct within the scope of duty. In short, there should be a breach of the said duty and also a consequential damage. There is a cause of action for negligence when damage had occurred. The cause of action for 'Negligence' accrues when damage viz., Real Damage, as distinct from purely minimal damage is suffered vide decision **Edehomo v. Edehomo**, [2011] 1 WLR 2217.

26. It is relevant for this Court to make a significant mention that the word 'Negligence', is a 'Breach of Duty' caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do as per decision **Blyth v. Birmingham Waterworks Company**, (1856) 11 Ex 781, 784.

27. It is to be noted that the existence of a 'Duty Situation' or a 'Duty to Take Care' is thus essential before a person can be held liable in Negligence, as per decision in **Jeet Kumari Poddar V. Chittagang Engineering and Electrical Supply Co. Ltd.**, (1946) ILR 2 Cal 433.

28. Undoubtedly, a Teacher in a School is expected to show such care towards a child under his charge as would be exercised by a reasonable careful parent, that duty of care varies from situation to situation. The Law concerns itself with carelessness only when a duty to take care and where failure in the duty had caused damage. Therefore, 'Carelessness' assumes the legal quality of 'Negligence'



and entails the consequence in Law of Negligence.

29. At this juncture, this Court aptly points out that 'Negligence' means more than heedless or careless conduct whether in omission or commission, it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom, duty was owing as per observation of **PER LORD WRIGHT in Lochgelly Iron and Coal Company V. Mullan, (1934) AC 1, p. 25.**

30. The onus of proving 'Negligence' is on the plaintiff/Petitioner, who not only prove the factum of Respondent/Defendant's negligence and that of his own damage but ought to exhibit that the one was the effect of the other.

31. It is to be pointed out that every occupier of premises owes a general 'Duty Of Care', which is extended to all of his visitors and the Visitors may include the Invitee, Licensee, a Contractual Visitor or even a Trespasser. Admittedly, a Contractual Visitor is a person, who had paid some consideration to the occupier for admittance in the precincts/premises. Therefore, it can be safely stated that there is a contract between the 'Occupier' and the 'Visitor'.

32. In fact, the 'Duty of Care' is impliedly created out of this contract as opined by this Court. At this stage, this Court aptly points out that an occupier of a Cinema Hall, where entrants are contractual visitor owes a 'Duty of Care' to each of such visitor against all foreseeable dangers and harm as per the decision of the Honourable Supreme Court in **Sushil Ansal v. State** reported in **(2014) 3 SCC, page 174.**

33. When there is invitation by an occupier or when there is express opinion, it is a clear case of the fact that an entrant is a visitor. However, visitors may include individuals entering with implied permission and in this situation, a question will naturally arise as to whether 'entrant' is a visitor with an implied permission or a trespasser in Law. However, the said issue is to be determined by taking into consideration all the concerning attendant facts and circumstances of a given case.

34. No doubt, the parent owes a child/boy a 'Duty of Care' pertaining to the boy/child's physical security, a Teacher of a School is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. Of course, the 'Duty of Care' varies from one situation to another situation.

35. To prove a 'Duty of Care', the four required features are (i) Anticipation of harm; (ii) Proximity in relationship, which implies that the persons are related; (iii) It is just and reasonable that the 'Duty of Care' should exist; and (iv) Policy considerations do not negative the existence of 'Duty'.



36. Apart from that, there are three aspects of negligence and that as follows: (i) Duty to take care; (ii) Breach of Duty; and (iii) Consequential Damage. More often the not, the facts and considerations relevant to it overlapped on numerous occasions. It cannot be forgotten that a person guilty of a breach of statutory duty towards another cannot rely on the latter's consent as defence as per the decision in ***Wheeler v. New Merton Board Mills [1933] 2 KB 669;***

Glimpse of Decisions:

37. It is to be noted that an Operator of a Swimming Pool is not an insurer of his patron's safety. But, owes only a reasonable care to provide for his safety (***vide Sistrunk v. Audubon Park Natatorium, Inc., (La. 1935) 164 So.667.***

38. Undoubtedly, a Court of Law is to follow the doctrine that a duty of the Operator of a public place, to exercise reasonable care to take note of a vital fact that the premises are safe for business visitors coming upon them and the same cannot be delegated to another person(s).

39. Where the descendent drowned in a Pool while one of the Guards was giving diving lessons and a second Guard was talking to a girl, it was held that the defendant was liable for the negligence of the 'Lifeguards' (***vide Lipton v. Dreamland Park Co., 121 N.J.L. 554, 3 A. (2d) 571 (1939).***

40. It is to be pointed out that 'Lifeguard(s)' ought to be employed/engaged exclusively in watching the Swimmers, who are in difficulty. Also that, the Proprietor of a Swimming Pool or Beach need give warning only of dangers not known to the patron or a person of ordinary intelligence (***vide Johnson v. Baurer, (Mass. 1935) 198 N.E. 739***)

41. It may not be out of place for this Court to cite the decision ***Williams V. GW Railway Company, 1874 LR 9 EX.157***, where the Defendant Company neglected to have gates and a watchman at a crossing as required by certain Acts and one day a child was lying on the rails with one foot severed from his body, it was held that the accident to the child was caused by Company's omission to fence.

42. In the decision ***U.P.Sharma V.Jabalpur Corporation and others, AIR 2010 (NOC) 919 (M.P)***, a Mound of sand was lying on a street. The plaintiff was passing that way on his motor cycle at night. He ran over the sand. His vehicle skipped and he suffered injuries. It was observed that the accident not have arisen if the Municipality had done its duty in keeping the road without obstructions. The Municipal Corporation was held responsible to pay compensation to the victim for its Negligence.



43. In the decision **State of Gujarat V. Shantilal**, AIR 1969 SC 634, the Honourable Supreme Court of India, has held as follows:

"That word 'compensation' means anything given to make things equivalent, a thing given to or to make amends for loss, recompense, remuneration or pay."

44. In the decision of Mysore High Court **M.Ayyappan v. Moktar Singh**, 1969 ACJ 439 (Mys), it is held as follows:

"Thus, it is clear that the word 'compensation' is a more comprehensive term and the claim for compensation includes a claim for damages and hence, the petitioners could have put forward their suit claim before the Motor Accidents Claims Tribunal."

45. In Law, the damages awarded ought to be such that the ordinary sensible man would not instinctively regard them as either mean or extravagant but would consider them to be sensible and fair, vide decision **Salmon L.J. in 1968 1 All. E.R. 726**.

46. There is no two opinion of a prime fact that the award of monetary compensation certainly cannot compensate a valuable, precious loss of human life. No wonder, the damages/compensation awarded to the family of the deceased cannot renew the physical frame that was battered and shattered. The compensation awarded by a Court of Law in a given case should not be a pittance or a miserly one. Always, little guess work, this way or that way is quite possible and permissible in the considered opinion of this Court.

47. The **Lord Morris** in the decision **1970 AC 1**, had observed that 'To compensate in money for pain and for physical consequences is invariably difficult by no other process can be devised than that of making a monetary assessment. However, it is the primordial duty of a Court of Law to award as perfect a sum as is within its purview and power.

48. It cannot be forgotten that mere happening of an accident will provide Prima Facie evidence that it was the result of want of 'Due Care'; 'Res Ipsa Loquitur' means 'The occurrence speaks for itself'. This is so when (1) the injurious agency is under the management and control of the defendant; (2) the 'Accident' is such, as in the ordinary course of things does not happen, if those who have the management exercise proper care.

49. In this regard, to prevent an aberration of Justice this Court quotes a leading decision in **SCOT V. London & St. Katherine Docks Company**, 1865 3 H & C at page 596 wherein it is laid down as follows:

"There must be reasonable evidence of Negligence, but where the thing is shown to be under the Management of Defendant or his servant, and the extent is such as



in the ordinary course of things does not happen if those who have the management used proper care, it affords a reasonable opportunity in the absence of any explanation by the defendants that the accident arose for want of care."

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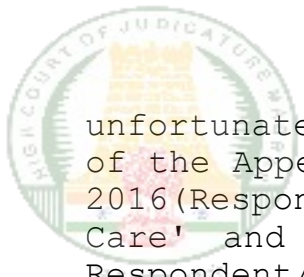
50. As regards the death of 7 years old boy, who fell into an open man hole was caused by 'asphyxia' as a result of drowning, the principle of 'Res Ipsa Loquitur' was applied. It was also observed that the Respondents had provided no explanation as to why the man hole assuming that it was covered on the day of incident, was found uncovered three days later, as per decision **S.H.Kishanlal and others V. Government of NCTE of Delhi and others, AIR 2007 (NOC) 2444 (Del.)**.

AWARD OF INTEREST:

51. Coming to the aspect of awarding 'interest' the same is payable by means of Restitution, of course, 'interest' cannot be claimed by anyone as a matter of Right or routine. In this connection, exercise of discretionary power by a Court of Law to award 'interest' is to be applied judicially based on the facts and circumstances of a given case and the conduct of parties. While awarding interest, a Court of Law can take a judicial notice of not only the spiralling rise in the cost of essential commodities, inflation, stagnation and also fall in bank rate of interest.

52. As far as the present case is concerned, at the time of death of the First Respondent/Writ Petitioner's son Aswin Ram was aged fourteen years and four months and studying in 9th Standard. Admittedly, the First Respondent/Writ Petitioner's son Aswin Ram participated in the 'Marathon Race' that took place on 22.01.2009. It appears that after the 'Marathon Race' conducted by Dhanam Trust/Private person, some of the students went to the Swimming Pool and when the Officials of the Respondent Nos.8 & 9 were present during the 'Marathon Race' viz., at the starting place as well as at the destination, then, it is the duty of the Appellants in W.A(MD) No.1441 of 2016/Respondent Nos.8 and 9, to take care of their students from the time they were all assembled at the starting point till their parents take them back home. In case of failure of the parents to turn up at the destination place, then, the Officials of the Appellants in W.A(MD) No.1441 of 2016/Respondent Nos.8 and 9 or Members should have taken care of the students and steps should have been taken to take care of the students and to inform the parents to make necessary arrangements to take back their children.

53. In the instant case, Respondent Nos.8 and 9, the Officials of the Appellants in W.A(MD) No.1441 of 2016, were not present at the commencing place during the time of Marathon Race. As such, one can safely conclude that the Appellants in W.A(MD) No.1441 of 2016/Respondent Nos.8 and 9, who are in management of the School had not exercised due care and diligence and their abject failure in this regard had resulted in the happening of



unfortunate occurrence. In short, only on account of the negligence of the Appellants School Authorities/Appellants in W.A(MD)No.1441 of 2016(Respondent Nos.8 and 9), in regard to their general 'Duty Of Care' and not Foreseeing/Anticipating the Danger/Harm, the First Respondent/Writ Petitioner's son and others went to the Swimming Pool maintained by the Appellant in W.A(MD)No.724 of 2015 (Fifth Respondent in the Writ Petition).

54. Obviously, in the Swimming Pool there was no-one to take care of the students, who went to the Swimming Pool after the 'Marathon Race'. It is quite evident in the instant case that the First Respondent/Writ Petitioner's son and other Amateur students went to the Swimming Pool without any Escorts or Care-Taker as the case may be and it is suffice for this Court to make a pertinent mention that the Appellant in W.A(MD)No.724 of 2015/Fifth Respondent/Madurai Corporation had failed to provide enough safeguards to protect the individuals/swimmers.

55. At the time of quantifying and arriving at a figure for 'Loss of Expectation of Life', a Court of Law is to bear in mind that this figure is not to be calculated for the 'Prospective Loss' or 'Further Pecuniary Benefits' or 'Further Pecuniary Loss'.

56. In fact, the compensation is paid for the termination of life which results in persistent/constant pain and suffering. However, the pain and suffering do not fall back upon the financial position of the victim/claimant, but rather on the capacity and ability of the deceased to provide happiness to the claimant.

57. In the decision of **M.S.Grewal v. Deep Chand Sood** reported in **2001 ACJ 1719 (SC)**, wherein 14 students from a public school got drowned in a river due to negligence of the Teachers. On the question of quantum of compensation, the Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was also emphasised that the Court must ensure that a just compensation was awarded.

58. The purpose of 'Award of Damage is to give Petitioner/Plaintiff a compensation for 'Damage or Loss or Injury' he had suffered. The elements of damage recognised by Law are divided into two main categories: (1) Pecuniary and Non-pecuniary. 'Pecuniary Loss' is capable of being arithmetically sorted out. Non-pecuniary loss is not so calculable, in the considered opinion of this Court. However, the 'Non-Pecuniary Loss' is compensated in terms of money, not as a substitute or replacement for other sum, but as a substitute and it is the prudent course of action resorted to by a Court of Law.

59. It is true that a 'Homo-sapien's life cannot be measured only in terms of 'Loss of Earnings' or 'Monetary Losses' alone. There are emotional movements/attachments involved and loss of a child can have a disastrous effect on the family which can be easily



imagined and very much appreciated. In this scenario, in Law, one is to be compensated, who had suffered a Non-Pecuniary Loss or Damages as a consequence of the wrong done to him by way of Damages/Monetary compensation as the case may be.

60. In the decision of the Honourable Supreme Court in the case of **R.D.Hattangadi v. Pest Control (India) Pvt. Ltd., 1995 ACJ 366 (SC)**, it has been observed as follows:

"(9) Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for loss of amenities of life which may include a variety of matters, ie., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, ie., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

61. In view of the foregoing observations and this Court on a overall assessment of the entire conspectus of the surrounding facts and circumstances of the instant case, in an integral manner, comes to a conclusion that the Appellants in both the Writ Appeals were negligent and because of the negligence, the students including the First Respondent/Petitioner's son went to the Swimming Pool of the Appellant in W.A(MD)No.724 of 2015/Madurai Corporation and for want of exercise of the Madurai Corporation's proper care in providing the necessary safeguards like Life Savers, Security Guards, Swimming Instructors, Care-takers etc, the incident had occurred, whereby and whereunder the First Respondent/Writ Petitioner has lost his only son. Therefore, the Appellants in both the Writ Appeals are liable to pay damages/compensation to the First Respondent/Writ Petitioner, who is the father of the deceased.

62. Be that as it may, this Court on a careful consideration of the impugned order dated 15.04.2015 in W.P(MD)No.10045 of 2009 passed by the Learned Single Judge is of the earnest opinion that the view taken by the Learned Single Judge in awarding the



compensation of Rs.9,60,000/- to the First Respondent/Writ Petitioner, as Damages/Compensation for the death of his son and the further direction to the Appellants herein/ Respondents 5, 8 and 9 to pay the compensation in equal terms ie., Rs.4,80,000/- by the Appellant in W.A(MD)No.724 of 2015 and Rs.4,80,000/- by the Appellants in W.A(MD)No.1441 of 2016, within twelve weeks from the date of receipt of a copy of the order, failing which, the compensation amount shall carry interest at 7% per annum from the date of incident, viz., 22.01.2009 till the date of payment in full, does not suffer from any material irregularity or patent illegality in the eye of Law. As a matter of fact, the impugned order of the Learned Single Judge dated 15.04.2015 in W.P (MD)No.10045 of 2009, is free from any flaw. Consequently, the Writ Appeals fail.

DISPOSITION:

63. In the upshot, the Writ Appeals are dismissed leaving the parties to bear their own costs. Consequently, the order passed by the Learned Single Judge dated 15.04.2015 in W.P(MD)No.10045 of 2009, is confirmed for the reasons assigned by this Court in the Writ Appeals. Consequently, connected Miscellaneous Petitions are closed.

64. Before parting with the case, it is represented on behalf of the School Authorities/Appellants in W.A(MD)No.1441 of 2016 that they had remitted their share amount of Rs.4,80,000/- (Rupees Four Lakhs and Eighty Thousand Only) with interest if any to the credit of W.A(MD)No.1441 of 2016 in the Indian Bank, High Court Branch, Madurai and as such, this Court grants 'Liberty' to the First Respondent/Writ Petitioner to file necessary 'Payment Out Application' (as per Civil Rules of Practice) and to withdraw the said sum, of course, in the manner known to Law and in accordance with Law.

65. Insofar as the Appellant/Madurai Corporation in W.A(MD)No.724 of 2015 is concerned, it is directed to remit its share sum of Rs.4,80,000/- (Rupees Four Lakhs and Eighty Thousand Only) to the First Respondent/Writ Petitioner together with interest at 7% per annum from the date of occurrence on 22.01.2009, till the date of realisation in full (as ordered by the Learned Single Judge in W.P(MD)No.10045 of 2009), within a period of one month from the date of receipt of a copy of this judgment. On such remittance by the Appellant in W.A(MD)No.724 of 2015/Madurai Corporation, the First Respondent/Writ Petitioner is directed to file necessary 'Payment Out Application' (as per Civil Rules of Practice) and to withdraw the said amount, of course, in the manner known to Law and in accordance with Law.

Sd/-

Assistant Registrar (CS-III)



1. The Secretary,
State of Tamil Nadu,
Education, Science and Technology Department,
Fort St. George, Chennai.

2. The Secretary,
Tamil Nadu Sports Development Corporation,
Chennai.

3. The Director of School Education,
College Road, Nungambakkam,
Chennai - 600 006.

4. The District Collector,
Madurai District, Madurai.

5. The Revenue Divisional Officer,
Madurai North, Madurai.

6. The Tahsildar,
Madurai North,
Madurai.

+ 1 CC TO Mr. R.MURALI, ADVOCATE IN SR No. 90273
+ 2 CC TO M/s.J.ANANTHAVALLI, ADVOCATE IN SR No. 90293, 90294
+ 1 CC TO Mr.V.R.VENKATESAN, ADVOCATE IN SR No. 90647

PM

TE/KP/SAR-2 : 15/12/2017 : 23P/11C

COMMON JUDGMENT MADE IN
W.A. (MD) Nos. 724 of 2015 and 1441 of 2016 and
M.P (MD) No. 1 of 2015 and
C.M.P (MD) No. 10964 of 2016
30.11.2017