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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Writ Petition (MD) No.1223 of 2013

and

M.P (MD) Nos.1 and 2 of 2013

S.Sekar

... Petitioner

Vs.

1.The Secretary to the Government,
Revenue Department, Secretariat,
Chennai 600 009.

2.The District Collector,
Madurai District, Madurai.

3.D.Radhakrishnan

4.The Principal Secretary,
Industries Department,
Secretariat,
Chennai 9.

(R4 impleaded vide order dated
21.08.2015 in M.P (MD) No.1 of 2015)

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents, to reimburse the medical expenses of Rs.4.00 Lakhs incurred to the deceased petitioner's wife Avanammal at the Hospital and to provide just and adequate compensation of not less than Rs. 15 Lakhs to the petitioner for the loss of his wife due to the negligent act of the respondents and to initiate appropriate disciplinary proceedings against the 3rd respondent for failing in his duty within the stipulated period as fixed by this Court.

For Petitioner

: Mr.S. Govindan

For Respondents 1,2&4

: Mr.T.R.Janarthanan

Additional Government Pleader

For 3rd Respondent

: Mr.S.Chandrasekaran

ORDER

The case of the petitioner is that on 24.02.2012, at about 4.30 p.m. when his wife Mrs.A.Avanammal was cutting grass in their leasehold agricultural land, a heavy stone was thrown out of the quarry belonging to the third respondent during the blasting



operations and the same fell on the head of his wife causing grievous injuries. After taking treatment in the Government Hospital, Vadipatti, Madurai Government Rajaji Hospital at Madurai and Khana Joseph Private Nursing Home, Madurai, the petitioner's wife succumbed to the injuries on 23.03.2012. According to the petitioner, the second respondent being licensing authority had not taken precautionary measures to regulate the blasting operations, owing to which, the petitioner's wife died and hence, the respondents 1 and 2 are liable to pay compensation for the death of his wife. In this regard, the petitioner has made representation to the respondents and since the same has not been considered so far, the present writ petition has been filed.

2.The learned Additional Government Pleader, on the other hand submitted that all the precautionary measures were taken before using explosive substances and that the accident was only due to 'Act of God'. He reiterated the statements made in the counter affidavit stating that there is no provision in the Tamil Nadu Minor Mineral Concession Rules, 1959 to provide compensation to the persons affected. He further submitted that the petitioner is entitled to take recourse for claiming damages through the civil suit and the the writ petition is not maintainable.

3.I have carefully considered the submissions made by the learned counsel on either side.

4.There is a vague sentence in the counter affidavit stating that the petitioner's wife did not die owing to the accident that occurred during the blasting operations in the quarry pertaining to the third respondent, since in the private hospital record, the injury alleged to have been sustained due to assault and no serious objections were raised with regard to the cause of death of the petitioner's wife. However, the postmortem, as well as the hospital records of the other Government Hospitals, clearly show that the death was caused owing to the cranio cerebral injuries.

5.The petitioner had submitted that the quarry from which the stone fell was located very close to habitation and in this regard, the villagers adjoining the quarry have been giving continuous complaints to the respondents. Two of such complaints dated 16.03.2009 and 27.12.2010, along with acknowledgments from the second respondent, have been produced before this Court. On a perusal of these complaints, it is seen that the villagers had been complaining about the damages that is being caused owing to the blasting operations. The second respondent who had received the said complaint seems to have ignored the same without taking appropriate action. Hence, it can only be concluded that the quarry was located dangerously very close to the habitation and the second respondent had failed to take action on the complaints in this regard.

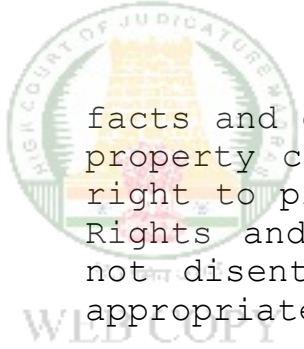


6. Insofar as the submission of the respondents that the accident had happened only due to 'Act of God' and there is no provision in Tamil Nadu Minor Mineral Concession Rules, 1959 to provide compensation to the victim is concerned, it is seen that the negligent act with respect to explosive substances is an offence under Section 286 of the Indian Penal Code. Admittedly, the third respondent is a licensee under the second respondent for using explosive substances in his quarrying operations. Under Rule 149 of the Explosive Rules of 1983, the licensee in charge of the use of explosives at the quarry site shall lay down a clear warning procedure consisting of warning signs and audible signals and all persons employed in the area shall be made fully conversant with such signs and signals.

7. Apparently, such a precaution seems to have not been done in the present case since the petitioner's wife happened to be dangerously close to the blasting site, unwary of the explosion. The second respondent being the licensing authority is duty bound to ensure that the blasting operations of the third respondent is being conducted strictly in accordance with the licensing conditions. In view of the same, I am constrained to hold that the petitioner's wife died only due to the rock which fell from the blasting operations at the nearby quarry site and that the second respondent is to be held liable for failing to take action in spite of the villagers' complaint.

8. Insofar as the liability to pay the compensation is concerned, learned counsel submitted that it is open to the petitioner to approach the Civil Court seeking for compensation. In this regard, it may be useful to refer to a Full Bench judgment of this Court reported in 2006 (5) CTC 97 (P.P.M. Thangaiah Nadar Firm Vs. The Government of Tamil Nadu). The relevant portion of the said judgment reads as follows:-

"38. Now the inevitable end of the journey or may be beginning of another. In view of the various decisions noticed by us and many other decisions referred to in such decisions, the following conclusions can be reached. The State is not necessarily liable in every case where there is loss of life or damage to the property during rioting. Where, however, it is established that the officers of the State ordained with duty of maintaining law and order have failed to protect the life, liberty and property of person and such failure amounts to dereliction of duty, the State would be liable to pay compensation to the victim. Such liability can be enforced through Public Law remedy or Common Law remedy. Where, necessary facts to establish culpable negligence on the part of the officials are available, the High Court under Article 226 can issue appropriate direction. Where, however, the main aspect relating to culpable negligence of the officer is seriously disputed, filing of suit may be more appropriate remedy. No hard and fast rule can be laid down on these aspects and obviously the availability of remedy under Article 226 would depend upon the



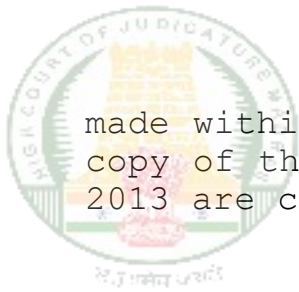
facts and circumstances of each case. Compensation for loss to the property can also be claimed under Article 226 and merely because right to property has been deleted from the Chapter of Fundamental Rights and has been recognised as a Constitutional right, would not disentitle the High Court to examine that question in any appropriate case."

9.The above observation of the Hon'ble Full Bench is squarely applicable to the petitioner's case and as such, the writ petition is maintainable. The defence that the Government of Tamil Nadu is not liable to compensate the victim is also answered by the Full Bench, as extracted above. In view of the same, I am of the considered opinion that the writ petition is maintainable and that the Government is liable to suitably compensate the petitioner.

10.Learned Additional Government Pleader has also submitted that the respondents had taken all the precautionary measures to see that no such untoward incident occurs and therefore, the accident as 'Act of God' for which the respondents cannot be held liable. It may be useful to refer to a judgment of the Hon'ble Supreme Court reported in 2002 (2) SCC 162 (Madhyapradesh Electricity Board Vs.Shailkumari) wherein the Supreme Court had an occasion to deal with the Doctrine of Strict Liability. The relevant portion of the said judgment reads as follows:

"8.Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

11.In fine, the writ petition is allowed and the respondents are directed to pay a sum of Rs.5 lakhs by way of reimbursement of the medical expenses incurred by the petitioner towards his wife's treatment as well as compensation for her death due to the negligence of the respondents. Such a payment shall be



made within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2013 are closed.

Sd/-

Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to the Government,
Revenue Department, Secretariat,
Chennai 600 009.

2.The District Collector,
Madurai District, Madurai.

3.The Principal Secretary,
Industries Department,
Secretariat,
Chennai 9.

+One cc to The Special Government Pleader, SR.No.12618

+2ccs to Mr.S.Chandrasekaran, Advocate, SR.No.12136

sms

RL/7C/5P/RR/24.3.2017

Pre-delivery order made in
Writ Petition (MD) No.1223 of 2013
and
M.P(MD)Nos.1 and 2 of 2013

03.03.2017