

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.7764 of 2009

K. Padmini ... Petitioner

Versus

1. Government of Tamilnadu Rep. by
The Secretary,
St. George Fort,
Chennai.
 2. The Secretary,
Health Department, Secretariat,
St. George Fort, Chennai.
 3. The Director,
The Directorate of Medical Sciences,
Chennai.
 4. The Dean,
Government General Hospital,
Chennai.
 5. The Commissioner of Police,
Chennai city,
Egmore,
Chennai.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the respondents to pay Rs.25,00,000/- (Rupees twenty five lakhs only) as compensation to the petitioner for loss and the mental agony caused by the respondents due to their duty negligence.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.T.M.Pappiah
Special Government Pleader

ORDER

The petitioner's husband, who was aged 47 years old, met with an accident at Palikonda Toll-gate, Vellore District on 20.11.2008. In the accident, he suffered severe head injuries and was admitted at Christian Medical College, Hospital, Vellore and subsequently he was given treatment at Government General Hospital, Chennai. Finally, on 23.11.2008, the husband of the petitioner has been declared as dead. Immediately, after the death of the husband of the petitioner, her family members approached the Government General Hospital, Chennai for taking the body to perform last funeral rites to him. Unfortunately, it so happened there was a mix up in the mortuary and according to the petitioner, the hospital authorities have given a dead body of an unknown person. On enquiry, it was found that the dead body of her husband was given to some other family, who had taken the same and immediately, cremated the body.

2. Due to the grave negligence on the part of the 4th respondent, the petitioner and the family members were denied to perform the last rites to the husband of the petitioner, resultantly, which caused, depression, untold mental agony and anguish. Such an anguish shall remain with the petitioner and her family members throughout their life time, since the petitioner was denied the right to take the dead body of her husband for performing last rituals / rites.

3. In the above said circumstances, the petitioner has approached this Court to take action against the persons, who have found to be negligent in mixing of dead bodies at the mortuary of the 4th respondent hospital and also for payment of adequate compensation for the act of negligence by the hospital authority.

4. Heard Mr.G. Elanchezhian, learned counsel appearing for the petitioner and Mr.T.M. Pappiah, learned Special Government Pleader for respondents.

5. It is stated in the counter affidavit that a complaint has been given by the family members of the petitioner and the action has been taken against the person responsible in the said hospital and due to the act of negligence on the part of the hospital authorities, body of the petitioner's husband has not been handed over to the petitioner.

6. Be that as it may, the petitioner now seeks for compensation, which has to be considered by this Court, since admittedly due to the negligence of the 4th respondent officials, the petitioner and her family members had been denied extremely valuable rights to perform the last rites to her deceased

husband . Though this Court cannot quantify the compensation payable in such circumstances, at the same time, this Court is of the considered view that once negligence is admitted, the petitioner is entitled to some compensation at the hands of the Government.

7. Moreso, when admittedly, the dead body belonging to some other person had been handed over, at this situation, this Court can very well visualise the kind of agony and anguish went through by the family members of the petitioner to perform the last rites. Moreover, the petitioner's and family members had been forcibly denied of their rights to see the body of the deceased before performing final rites to the body. Therefore, this Court is of the firm view that the petitioner is entitled for a reasonable compensation. However, such compensation has to be decided by the Government. Therefore, this Court in the circumstances of the case hereby directs the petitioner to submit a representation claiming adequate compensation, to the second respondent within a period of one week from the date of receipt of copy of the order and thereafter, the second respondent is directed to dispose of the representation by granting some compensation considering the agony and anguish suffered by the petitioner's family members due to the negligent act of the 4th respondent hospital. The order shall be passed by the second respondent within a period of six weeks from the date of the copy of the representation. It is made clear that the petitioner is entitled to compensation. However, the Court leaves it to the discretion of the authority to decide the quantum of such compensation payable.

8. The writ petition is disposed of, as above. No costs.

Sd/-

Assistant Registrar (CS IV)

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Sub Assistant Registrar

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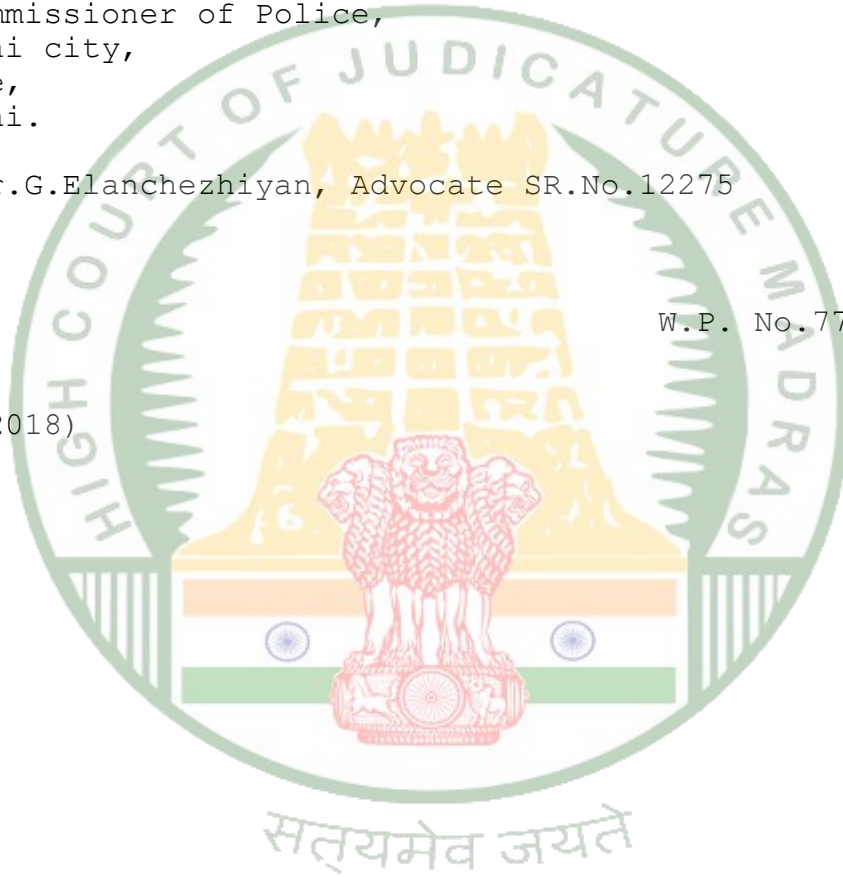
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+lcc to Mr.G.Elanchezhiyan, Advocate SR.No.12275

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SJ(CO)
GN(19/03/2018)



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