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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.11.2018

CORAM:
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.22694 of 2018
and
W.M.P (MD) No.20587 of 2018

S.Ammavasi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Health and Family Welfare,
Secretariat,
St. George Fort,
Chennai - 600 009.

2.The Director,
Department of Health and Family Welfare,
D.M.S complex,
D.No,361, Anna Salai,
Chennai - 600 006.

3.The Director,
Directorate of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.

4.The District Collector,
Madurai District,
Collectorate,
Madurai - 628 601.

5.The Dean,
Government Rajaji Hospital,
Alwarpuram,
Madurai - 625 020.

6.Gopi Manohar,
Orthopaedic Surgeon,
Government Rajaji Hospital,
Alwarpuram,
Madurai-625 020.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the respondents to grant compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the



petitioner for loss and sufferings due to the negligence of the Doctor of the Madurai Rajaji Hospital, the sixth respondent herein.

For Petitioner : Mr.B.Rooban

For RR 1 to 4 : Mr.C.M.Marichelliah Prabhu,

Additional Government Pleader.

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ORDER

This writ petition has been filed seeking a writ of Mandamus, to direct the respondents to grant compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner for loss and sufferings due to the negligence of the Doctor of the Madurai Rajaji Hospital, the sixth respondent herein.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 4.

3. The learned counsel appearing for the petitioner submitted that during the month of March, 2016, accidentally, the petitioner fell into a well and sustained fracture in his right thighbone. Hence, on 19.06.2016, he got admitted in a private hospital, namely, Bala Hospital, Usilampatti and plates have been fixed with screws to join his fractured thighbone. After some days, when he started walking, he suffered with severe pain and the plates fixed inside his leg was bend. Hence, he got admitted at Madurai Government Rajaji Hospital on 18.03.2017 and undergone surgery on 29.03.2017. The said surgery was done by the sixth respondent and in the said surgery, the plates fixed earlier was removed and IMIL nailing (femur nailing) and bone grafting were done to fix his fractured thighbone and got discharged on 03.04.2017. Even after that, he suffered with severe pain in the stitched portion in his right leg and around the right side hip portion and there was discharge of pus from the stitched portion. Hence, he visited Government Rajaji Hospital for further treatment and requested them to give treatment for the same, but all ended in vain.

4. The learned counsel further submitted that due to severe pain, the petitioner got admitted in Aristo Hospital at Madurai on 16.03.2018 and undergone surgery and the rods and nails fixed were removed and discharged from the said hospital on 20.03.2018. But, even after that, the pain has not reduced. Hence, he once again went to Aristo Hospital on 23.07.2018 for check-up. At that time, in the X-ray taken in Aristo Hospital, it was diagnosed that a '11 knife' without handle used in the surgery, was left into his body negligently and as per the petitioner's contention, the same remains near his right hip portion and it is the cause for the pain and discharge of pus. The Doctors at Aristo Hospital informed the petitioner that the said knife was left inside the body during the surgery done at Madurai Government Rajaji Hospital and for removing the knife, another surgery has to be done, which will cost around Rs.1,00,000/-.



5. The learned counsel for the petitioner would further contend that the petitioner lodged a police complaint on 05.08.2018 against the Doctors and Administration of Aristo Hospital in S.S.Colony Police Station in CSR No.374/2018 by suspecting that they could have left the knife inside his body during the surgery. At the time of enquiry, the Manager of Aristo Hospital explained the fact that the knife was not found in the X-Ray taken on 18.03.2017 before the surgery at Madurai Government Rajaji Hospital and the same is clearly visible in the X-Ray taken on 30.03.2017 and 04.05.2017 after the surgery at Madurai Government Rajaji Hospital. He further explained that since the knife was there inside the body of the petitioner even before the surgery at Aristo Hospital and they are no way responsible for the said negligence. The police official, who conducted the enquiry, kept the matter in abeyance since the negligence is found to be on the part of the sixth respondent, who has done surgery at Madurai Government Rajaji Hospital.

6. The learned counsel for the petitioner further submitted that the petitioner is suffering from intolerable pain and became unfit to do any physical work and spend more money for treatment, he sent a representation dated 26.09.2018 to the Honourable Chief Minister's Cell, to direct the respondents 1, 2 and 4 to conduct surgery to the petitioner on the direct supervision of the fifth respondent to remove the knife inside his body and to grant appropriate compensation for his loss and sufferings due to the negligence of the sixth respondent, the Doctor of the Government Rajaji Hospital, Madurai. After receiving the said representation, the second respondent has forwarded the same to the third respondent. Since no action has been taken so far, the petitioner has filed the present Writ Petition.

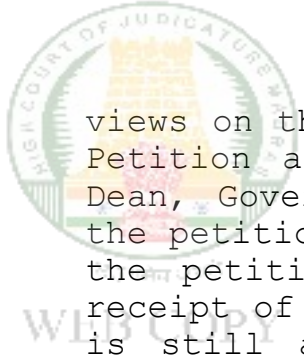
7. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 4 and perused the materials available on record.

8. At the outset, this Court finds that the Writ Petition is not maintainable regarding the claim of compensation. It is based on the facts and evidence which has to be let in regarding the negligence of the said Doctor, whoever performed the surgery and left '11 knife' inside the body of the petitioner and for that, the petitioner has to seek his remedy before the competent civil Court for getting compensation.

9. Now, it is stated by the learned counsel appearing for the petitioner that the petitioner is not able to walk and it is advised by the Doctors that the said '11 knife' has to be removed by way of performing an another operation. Hence, at present he restricts his prayer and seeks a medical remedy before the Government Rajaji Hospital, Madurai.

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

10. In view of the same, this Court is not expressing any



views on the merits of the case, which has been averred in the Writ Petition and only on humanitarian ground, this Court directs the Dean, Government Rajaji Hospital, Madurai to consider the case of the petitioner and give preference and fix a date for examination of the petitioner within a period of four weeks from the date of receipt of a copy of this order and if '11 knife' is still available as per the medical opinion by the concerned Doctor, it can be removed by performing another surgery to the petitioner as soon as possible, since the petitioner is suffering with severe pain and he is not able to walk.

11. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-III)

To

1.The Principal Secretary to Government of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, St. George Fort,
Chennai - 600 009.

2.The Director,
Department of Health and Family Welfare,
D.M.S complex,
D.No,361, Anna Salai,
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3.The Director,
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No.162, EVR Periyar Salai,
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4.The District Collector,
Madurai District,
Collectorate,
Madurai - 628 601.

5.The Dean,
Government Rajaji Hospital,
Alwarpuram,
Madurai - 625 020.

+1cc to Mr.R.ROOBAN, Advocate, SR.No.95371

+1cc to M/s.Special Government Pleader,SR.No.95388

W.P(MD)No.22694 of 2018

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