

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04..09..2019
Orders Pronounced on: 23..09..2019
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.27179 of 2005

Kanagaraj @ Ammasai

... Petitioners

-Versus-

1.The District Collector,*
Tiruppur District,
Tiruppur.

[*Cause Title amended as per order dated 03.10.2019 in
W.M.P.No.28728 of 2019 in W.P.No.27179 of 2005]

2.The District Educational Officer,
Town Hall,
Coimbatore,
Coimbatore District.

3.The Assistant Elementary
Educational Officer,
Pongalur,
Coimbatore District.

4.R.Balusamy

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the State, the respondents herein to pay the compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner for the death of his two sons namely, Dhamodharan 4 years and Deepak 3 years within a period as fixed by this court.

For Petitioner

: Mr.N.Manokaran

For Respondent(s)

: Mr.I.Sathish, AGP for
RR1 to 3

Mr.G.Saravanan for R4

ORDER

This writ petition has been filed seeking compensation from the respondents for the death of the petitioners minor children (1) Dhamodharan, aged 4 years and (2) Deepak, aged 3 years.

2. The facts leading to the filing of this writ petition, in brief, are as follows:- The petitioner is a permanent resident of Velampatti Village in Tirupur District. He had two male children by name (1) Dhamodharan, aged 4 years and (2) Deepak, aged 3 years. The respondents have constructed a Child Welfare Center at Velampatti Village under 'Sampoorna Rojkar Yojana Scheme'. For the purpose of storing water, at the time of construction of building for the Child Welfare Center, the respondents constructed a ground level water storage tank. Even though the construction work was over long ago, the respondent failed to close the ground level water tank and kept it open, water got stagnated in the tank.

3. While so, on 30.11.2004 at around 10.00 a.m. the sons of the petitioner, who were playing near the child welfare center, accidentally, fell into the water tank and died on the spot. Thereafter, based on a complaint given by the petitioner, a case was registered in Crime No.299 of 2004 on the file of the Inspector of Police, Avinashipalayam Police Station in Coimbatore District, under Section 174 of Cr.P.C. and after investigation, a final report was filed for offence under Section 304-A of IPC against the 4th respondent, who was a Civil Contractor of the building. According to the petitioner, the deaths were due to the willful negligence on the part of the respondents in not closing the ground level water tank which was constructed for the purpose of storing water during construction work was in progress. The construction work was over long ago and the possession of the building has also been handed over to the authorities. Had the respondent closed the ground level water tank immediately after the purpose was over or properly fenced the tank, the death of the children of the petitioner would not have occurred. Only due to the negligence of the respondents, two young children lost their lives. The State has an obligation to protect the lives of the citizen of this country as guaranteed under Article 21 of the Constitution of India, but, it failed to do so and, therefore, the petitioner is entitled for compensation from the State for the death of his two sons. Hence, this writ petition.

4. The 1st respondent - District Collector, Coimbatore, filed his counter affidavit inter alia contending that under 'Sampoorna Gramin Rojker Yojana, a building was proposed to construct at Vilampatti Village of North Avinashipalayam Panchayat in Coimbatore District, for child welfare center. A ground level water tank was constructed to store water for the construction of child welfare center. The construction work under the above said scheme was executed departmentally. On 30.11.2004, the two sons of the petitioner fell into the water tank and died due to drowning. The water tank was situated in the child welfare center premises and the children of the petitioner were not enrolled either in Child Welfare Centre or in the School. The children were left alone in the village and there was nobody to take care of them. The children who were playing around the child welfare center, fell in the water tank and died. However, the respondent cannot be held responsible for the same. It is further contended by the 1st respondent that there was no necessary for the children to enter into the premises of the child welfare center or school. The deaths were due to the negligence on the part of the petitioner who left the children unattended in the village. Therefore, no liability can be fastened on the respondents. The writ petition is liable to be dismissed.

5. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 3 and also perused the records carefully.

6. By now, it is a settled position of law that award of compensation in a proceeding under Article 226 of The Constitution of India is a remedy available in public law, based on strict liability for contravention of fundamental rights. Such a claim based on strict liability made by restoring to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right guaranteed under Article 21 of the Constitution of India.

7. In Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, the Hon'ble Supreme court has held as follows:-

"Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in

the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right."

8. It is also a settled position of law that when there is negligence on the face of it and it infringed the fundamental right guaranteed under Article 21 of The Constitution of India, awarding compensation under Article 226 of the Constitution of India is not a bar.

9. In *Rabindra Nath Ghosal Vs. University of Calcutta*, 2002 (7) SCC 478, the Hon'ble Apex Court has indicated the obligation of Courts to meet the social aspiration of people and held as follows:-

"9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently, when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 225 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against, public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties, unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

10. In Tamil Nadu Electricity Board Vs. Sumathi, reported in 2000 (4) SCC 543, the Hon'ble Supreme Court

"10. In view of the clear proposition of law laid by this Court in Sukamani Das case [(1999) 7 SCC 298] when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey [(1999) 1 SCC 741 : 1999 SCC (L&S) 389] where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy."

11. Keeping the above principle in mind, let me now consider as to whether the petitioner is entitled for compensation from the State for the death of his two children?

12. It is an admitted case that the respondents have constructed a building for establishment of a child welfare center at Velampatti Village. At the time of construction, the respondents have constructed a ground level water tank for storing water, but, the same was neither closed nor fenced properly though the construction work was over long ago. It is also seen that the Child Welfare Centre situated near a school premises. The deceased were aged about 4 and 3 years respectively. On the date of occurrence, the children, who were playing near child welfare centre, fell into the ground level water tank and died due to drowning. The open ground level water tank situated within the school premises and it was constructed

by the respondents to accommodate tender aged children.

13. Now, it is the contention of the respondent that the deceased children were neither enrolled in the school nor child welfare center and there was no necessity for the children to enter into the premises at all. Since the parents had failed to take care of the children and left them unattended in the village, they fell into the water tank and died drowning and no negligence can be attributed to the respondents. The said contention of the respondents cannot be accepted for the simple reason that the accident took place near child welfare center which is public premises meant for children and the deceased children who were playing there fell into the ground level water storage tank which was kept open by the respondents negligently. The respondents cannot simply escape from the liability by saying the deceased children were neither enrolled in the child welfare centre nor in the school. We cannot expect such tender aged children to know that they had no right to enter into the premises. In the instant case, the respondents 1 to 3 ought to have taken steps to either to close the ground level water tank or cover it up by fencing so as to avoid any untoward incidents in the premises. It is only due to the negligence of the respondent the accident took place. The State has an obligation to ensure the safety of its citizens and the right to life guaranteed under Article 21 of the Constitution of India is a basic human right and the negligence on the part of the respondent infringed Article 21 of The Constitution of India.

14. Even though it is stated that it was the 4th respondent, a civil contractor, who had constructed the buildings for child welfare center and he is also liable to pay to pay compensation, in the counter affidavit filed by the 1st respondent, it is stated that the construction work was done by department itself and no contractor was engaged for the construction activities. Even assuming that the 4th respondent, the civil contractor, was engaged for the purpose of construction, the construction work was over long ago and the building was handed over to the respondents, but, the ground level water tank was left unattended and kept open by the government authorities. As stated earlier, the official respondents ought to have taken appropriate steps either to close the ground level open water tank or to fence it. but, they did not do so. The failure on their part now claimed the lives of the two innocent tender aged sons of the petitioner. Thus, the deaths of the children are attributable only to the gross negligence on the part of the official respondents and therefore, they are alone liable to compensate the petitioner adequately.

15. So far as the quantum of compensation is concerned, it is now well settled that the quantum can be decided by applying the principles which guide the Motor Vehicle Claims Tribunals. The petitioner has lost his both the sons and the children were aged about 4 and 3 respectively at the time of death. Had they been alive, they would have joined school and have had bright future. Further, the petitioner has been deprived of the love and affection his children. In view of the above, in the considered view of this court granting a sum of Rs.2,00,000/- each for the death of the two sons of the petitioner would be just and fair compensation for the loss of the petitioner's children.

In the result, the writ petition is allowed in part with a direction to the respondents 1 to 3 to pay a sum of Rs.2,00,000/- each for the deaths of the petitioner's two sons (in all Rs.4,00,000/-) as compensation to the petitioner within a period of six weeks from the date of receipt of a copy of this order. If the respondents fail to pay the above said amount within the time stipulated, the same shall carry interest @ 12% p.a. from the date of default till date of payment in full. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk
To

- 1.The District Collector, Tiruppur District, Tiruppur
- 2.The District Educational Officer, Town Hall, Coimbatore, Coimbatore District.
- 3.The Assistant Elementary Educational Officer, Pongalur, Coimbatore District.

+1 cc to Mr.N.Manokaran Advocate sr81706
+1 cc to Mr.G.Saravanan Advocate sr81888

W.P.No.27179 of 2005

aa15/11/2019