

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.13772 of 2007

Between :

PULI RAJU, S/o Veeraswamy, Student,
R/o Sangem village and Mandal, Warangal District.

.....Petitioner

and

Government of A.P., rep. by its Principal Secretary,
Department of Health and Family Welfare, Secretariat
Buildings, Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 18.02.2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.13772 of 2007

%18.02.2019

PULI RAJU, S/o Veeraswamy, Student,
R/o Sangem village and Mandal, Warangal District.

... Petitioner

Vs.

\$ Government of A.P., rep. by its Principal Secretary,
Department of Health and Family Welfare, Secretariat
Buildings, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri A.Ravinder

Counsel for the Respondents: Govt.Pleader for respondents 1 to 3;
Govt.Pleader for respondent No.4;
Sri S.Chandrasekhar for R5.

<Gist :

>Head Note:

? Cases referred:

AIR 1980 SC 1896
2018 Law Suit (SC) 89
2019 (1) ALD 408
(2013) 5 SCC 470
(2004) 3 SCC 553
2016 (7) CPSC 4 WP (Civil) No. 68 of 2011, dt:5.7.2016 SC
1992 Supp (2) Supreme Court Cases 27
(1983) 4 SCC 141
(2000) 4 SCC 543
(1992) 2 SCC 223
(1993) 2 SCC 746
(2000) 2 Supreme Court Cases 465
AIR 1969 SC 128
(1996) 2 SCC 634

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 13772 of 2007

ORDER:

It is opt to begin this judgment with following statement of law made by Supreme Court in **GUJARAT STEEL TUBES LTD. V. GUJARAT STEEL TUBES MAZDOOR SABHA**¹:

"146. In the second chapter of our sum-up, the first thing we decide is that **Article 226, however restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice; and, more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand What the tribunal may, in its discretion, do, the High Court too, under Article 226, can, if facts compel, do.....**

(Emphasis supplied)

2. Heard learned counsel for petitioner, learned Government Pleader for Medical and Health, Government Pleader for Home and Sri Chandrasekhar, learned counsel appearing for 5th respondent.

3. According to petitioner, his mother Puli Veera Laxmi died on 7.3.2002 in C.K.M. Government Maternity Hospital, Warangal as she was complaining of prolapsed uterus. Having regard to the seriousness of the ailment, surgery was performed on 6.3.2002 and on the same day by evening she complained

¹ AIR 1980 SC 1896

stomach-ache. In the intervening night of 6/7-3-2002 at about 2.00 A.M, another surgery was performed. However, immediately there after she was declared dead. Petitioner suspected negligence of the Doctors for death of his mother and lodged a complaint with the police. Petitioner and his family members also organized protest at the hospital. On 8.3.2002 post-mortem was performed by Dr C.Rami Reddy and Dr K Sudhakar Reddy, Professors, Forensic Medicine, Osmania Medical College. They opined that death was caused due to post operative hemorrhage from the pedicles consequent to Hysterectomy operation.

4. During the investigation, on the request of the Superintendent of Police, Medical Board was constituted to study the case file and to give their opinion as to whether there was any negligence on the part of the Doctors who performed operation. Medical Board report suggests negligence by the Doctors in attending to the patient. Petitioner prays to issue directions to first respondent to award compensation of 5.00 lakhs to the petitioner due to death of his mother on account of medical negligence.

5. Learned counsel for petitioner submits that mother of the petitioner would have survived if only proper treatment was administered to her and death occurred only because of the negligence which is apparent from the report of the Medical Board and the orders issued by the Director of Medical Education dated 2.12.2004 placed on record as Ex.P-5. As death occurred due to negligence of the Hospital, petitioner is entitled to compensation for untimely death of his mother. He would submit that his father

died at young age leaving the mother to take care of the petitioner and his sister. He further submits that petitioner belongs to toddy tapper community. His mother was looking after four toddy trees and was also working as agricultural labour to eke-out living; that she died at very young age of petitioner and his sister and on account of her death, petitioner lost both parents at young age which caused grave hardship and suffering. In support of his contention that writ Court can award compensation in exercise of power of judicial review under Article 226 of the Constitution of India, he placed reliance on the decision of the Supreme Court in **S.NAMBI NARAYANAN Vs SIBY MATHEWS AND OTHERS**² and decision of this Court in **MUKKAMULA ANURADHA Vs PRINCIPAL SECRETARY TO GOVERNMENT, MINORITIES WELFARE DEPARTMENT, GOVT OF A.P**³. He further submits that until 2007 petitioner was not aware of the medical negligence and he came to know only when he received notice in Criminal Petition 5477 of 2006 filed by the 5th respondent challenging taking cognizance of crime. He also submitted that alleging that no material was available to hold 5th respondent guilty, disciplinary proceedings were also dropped. In the extraordinary circumstances, petitioner has no other efficacious alternative remedy except to invoke the jurisdiction of this Court. He would submit that petitioner ought to have availed remedies provided under the Consumer Protection Act, 1986 and that writ petition is maintainable when effective and efficacious remedy is available. He would also submit that claim for compensation cannot be made in a writ petition.

² 2018 Law Suit (SC) 89

³ 2019 (1) ALD 408

6. Learned Government Pleader would submit that there is no negligence on the part of the Doctors and on account of the complications developed after the first surgery, the mother of petitioner died, therefore, petitioner is not entitled to compensation.

7. According to learned counsel for 5th respondent as is evident from the report of the Medical Board, there was no negligence on the part of 5th respondent. He has performed the surgeries on two occasions; that as soon as 5th respondent was informed about the complications developed to mother of petitioner post surgery performed on 6.3.2002, 5th respondent performed another surgery and removed the offending part of the body, however, her life could not be saved due to delay caused after complications were developed. He would submit that though initially petitioner sought to contend that 5th respondent left scissors and thread in the abdomen, which was a cause for death but the autopsy report clearly proves that what is alleged is not correct. Even the Medical Board has not pointed out leaving of scissors and thread in the abdomen, as alleged.

8. Based on the complaint lodged by the petitioner, investigation was conducted and charge sheet was filed in the Court of the I Additional Judicial First Class Magistrate at Warangal, wherein 5th respondent was shown as accused. The learned Magistrate took cognizance of the offence and it was registered as CC No.753 of 2006. 5th respondent filed Criminal Petition No.5477 of 2006 before this Court under Section 482 of Code of Criminal Procedure praying to quash the charge sheet in

CC No.753 of 2006. Learned single Judge of this Court by judgment dated 16.4.2007 allowed the petition quashing the proceedings against 5th respondent in CC No.753 of 2006, on the ground that there was no sanction accorded to prosecute 5th respondent under Section 197 of Cr.P.C. The departmental proceedings ended in favour of 5th respondent. From the report of the Medical Board, it is apparent that no findings were recorded against 5th respondent. In view of the same, 5th respondent cannot be held as liable for causing death of the mother of the petitioner.

9. Issue for consideration is whether petitioner is entitled to compensation due to death of his mother in the hospital after second surgery was performed on her ?

10. Before, considering the said issue it is also necessary to clear two objections,

- (i) jurisdiction of this Court to award compensation in a writ petition filed under Article 226 of the Constitution of India and
- (ii) maintainability of writ petition when alternative remedies are available to petitioner.

11. Jurisdiction vested in High Court under Article 226 of the Constitution of India is an extraordinary jurisdiction and has no bounds. It is an extraordinary remedy provided by Constitution to any aggrieved person, who has serious grievance against the public authorities due to whose negligence, carelessness, inaction, arbitrary decisions, the rights of such persons or the family members were affected. On the issue of scope and jurisdiction of the writ Court under Article 226 of the Constitution of India, we

are not in virgin territory. Precedent decisions throw enough light on the scope of jurisdiction under Article 226 of Constitution of India; self imposed restraint by the writ Courts; and parameters within which writ Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution.

12.1. Suffice to note few land mark decisions on 'when High Court can entertain writ petition'.

12.2. In **RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION AND ANOTHER V. DIAMOND & GEM DEVELOPMENT CORPORATION LIMITED AND ANOTHER**,⁴ Supreme Court held as under:

"21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the Court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the Court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such

⁴ (2013) 5 SCC 470

exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the Court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the Court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous."

12.3. In **ABL INTERNATIONAL LTD And Another v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD AND OTHERS**⁵, Supreme Court considered earlier decisions on scope of maintainability of a writ petition where there are disputed questions of fact and held as under:

"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a

⁵ (2004) 3 SCC 553

dispute in regard to the facts of the case, the Court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur, (1970) 1 SCC 582, this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ Court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

.....

.....

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the

Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

13. The Consumer Protection Act, 1986 is made to protect the rights of consumers and provides legal remedies against deficiency in service resulting in loss and hardship to a person. Under the Act, 1986, an aggrieved person can file petition before the District Consumer Forum/State Consumer Redressal Commission / National Consumer Dispute Redressal Commission, as the case may be within two years from the date of arising of cause of action alleging deficiency in service. In the instant case, cause of action arose to the petitioner on 7.3.2002 when mother of petitioner was pronounced dead. He ought to have filed the

petition under the Act, 1986 within two years thereafter. Fact remains petitioner did not avail the said remedy and instituted this writ petition in the year 2007.

14. Petitioner suspected that medical negligence was cause of death of his mother. However, he did not have concrete material to prove his allegation. He lodged complaint with the police alleging negligence as cause of death. Police registered the crime, investigated into the crime and filed charge sheet. In the process of investigation, on the request of police, Medical Board was constituted to ascertain the cause of death. Medical Board opined that death was caused due to negligence in diagnosing the complications. Petitioner claimed that he came to know about the factum of negligence only when he received notice from this Court in Criminal Petition No.5477 of 2007. At the time of death of his mother petitioner was aged about 18 years. At that age, it can not be expected that petitioner could have known firmly on cause of death. Further, it cannot be assumed that police could have informed the cause of death. Further, having regard to the educational and family background of the petitioner and his age at the time of his mother's death, it cannot be expected that petitioner could have independently probed into the cause of death, elicit the information and pursue his legal remedies immediately. The assertion of petitioner that he was not aware that death was caused due to medical negligence till he received notice in Crime No.5477 of 2007, cannot be discredited. In the facts of this case, it cannot be said that petitioner was not diligent in prosecuting his remedies.

15. Though ordinarily petitioner ought to have availed the remedy under the Act, 1986, by the time petitioner came to know full facts on the cause of death, limitation prescribed by the Consumer Protection Act, 1986 has expired. It is settled principle of law that alternative remedy is not a bar for entertaining the writ petition, if the facts of the given case warrant this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India by entertaining a writ petition even if the aggrieved party has an effective remedy but has failed to avail the same for valid reasons. This writ petition is pending since the year 2007 and the ghastly incident took place in the year 2002. We are now in the year 2019 i.e., after more than 17 years of the incident. At this stage subjecting the petitioners to the alternative remedy to claim compensation for the alleged wrong caused to him when the relevant facts are vividly displayed, as clear as crystal, is not just and equitable. Greater injustice would be caused if the relief is not granted in exercise of writ jurisdiction and relegating petitioner to other remedy. Moreover, law of limitation is staring at him and can not prosecute the other remedy. Thus, in the facts of this case, writ petition cannot be thrown out on the issue of availability of alternative remedy. In the facts of this case, it cannot be said that there is inordinate delay in instituting the writ petition.

16. The public law remedy is expanded to reach out to victims of negligence and carelessness due to actions/inactions of authorities functioning on behalf of the state or instrumentalities of the state, who have no respect for the values of the down trodden people. The long arm of writ Court is extended to award compensation to victims of neglect of duties by authorities acting

under the state. The case on hand is the epitome of such carelessness.

17. A brief parade of the precedents on the scope of awarding of compensation by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India is necessary to appreciate the contentions of Counsel appearing for respective parties.

17.1. The long arm of writ Court was extended to reach out to the families of persons, who suffered unfortunate death for no fault of them and due to negligence of public authorities. The cause of death was for various reasons; train accident (**Anil Kumar Gupta vs. Union of India and others**⁶); custodial death (**Rajalakshmi (Mrs) vs. Union Territory of Pondicherry and another**⁷); death of student because of beating by the students (**Banoth Bure Bai v. Secretary, A.P. Residential Educational Institutional Society and others**, 2012 (3) ALD 728 = 2012 (2) ALT 576); due to collapse of school building where under students were killed (**Kolli Yerukulamma v. Chairman, Visakhapatnam Port Trust**, 1996 (4) ALD 183); illegal detention (**Rudul Sah vs. State of Bihar and another**⁸); death by drowning of 14 students in swirling water (**M.S. Grewal and another v. Deep Chand Sood and others**, (2001) 8 SCC 151); death on account of electrocution (**Tamil Nadu Electricity Board vs. Sumathi and others**⁹); death due to fall in sewerage tank

⁶ 2016 (7) CPSC 4 WP (Civil) No. 68 of 2011, dt:5.7.2016 SC

⁷ 1992 Supp (2) Supreme Court Cases 27

⁸ (1983) 4 SCC 141

⁹ (2000) 4 SCC 543

(Kumari (Smt) vs. State of Tamil Nadu and others¹⁰); malicious prosecution **(S.Nambi Narayan).**

17.2. Letter dated 14.9.1988 by Smt. Nilabati Behera sent to Supreme Court was treated as writ petition under Article 32 of the Constitution [**Nilabati Bahera v. State of Orissa¹¹**]. In the said letter, she claimed that her son died in Police custody and she should be awarded compensation for the same. The Supreme Court held that it was a case of custodial death. The question for consideration was to fix liability to compensate petitioner. Supreme Court observed as under:

"10.It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings."

"17. It follows that '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

¹⁰ (1992) 2 SCC 223

¹¹ (1993) 2 SCC 746

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. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah's case (supra) and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

"32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the

Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament ... the Courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

"33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much as protector and guarantor of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the

citizens because the Courts and the law are for the people and expected to respond to their aspirations."

(Emphasis supplied)

17.3. A practicing Advocate of Calcutta High Court filed petition under Article 226 of the Constitution claiming compensation to the victim (a foreign national) who was allegedly gang raped in Yatri Niwas, belonging to Indian Railways (***Railway Board and others vs. Chandrima Das (Mrs) and others***¹²). High Court awarded compensation of Rupees ten lakhs to the victim. On appeal, the plea raised on behalf of railways in the Supreme Court was that Railways cannot be mulcted for the offences committed by individual employees. It was further contended that in exercise of writ jurisdiction, High Court could not have awarded compensation, that too at the instance of third parties and to a foreigner. Supreme Court rejected the contention against maintainability of writ petition.

17.4. It is held that when there is negligence on the face of it and Article 21 is infringed, there is no bar to award compensation under Article 226 of the Constitution [***Tamil Nadu Electricity Board v. Sumathi and others*** (supra)] and the writ Court should 'forge new tools and devise new remedies' [***Khadri and others v. State of Bihar***, (1981) 1 SCC 627)].

17.5. In **S.NAMBI NARAYANAN**, Supreme Court held that prosecution initiated against appellant was malicious, caused tremendous harassment and immeasurable anguish, that criminal law was set in motion without any basis, that criminal law was

¹² (2000) 2 Supreme Court Cases 465

initiated on some kind of fancy notion; that liberty and dignity of the appellant were jeopardized. In view thereof, Supreme Court observed that situation invites public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution of India. It also held that in such situation it should spring with immediacy. (paragraph 31)

18. At this stage, I am also reminded of question posed by *Justice P.N. Bhagwati* (as he then was) in **Khadri and others v. State of Bihar** (supra). He asked "Why should the Court not be prepared 'to forge new tools and devise new remedies' for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty'?. I am also reminded of the observations of *Justice J.S. Verma* (as he then was) in **Nilabati Behera v. State of Orissa** (supra). He said, "The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve 'new tools' to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law."

19. Thus, writ court can reach out to victims of State inaction/ illegal action/ victimization etc in exercise of power of judicial review and award compensation.

20. The facts which are relevant for consideration are not in dispute. Mother of petitioner was admitted in CKM Government Maternity Hospital at about 12.45 p.m. on 20.02.2002 complaining gynecology problem (prolapsed uterus). At about 1.00 p.m. on 06.03.2002 vaginal hysterectomy was performed. Patient developed complications after first surgery and complained of pain in the

abdomen. At about 5.00 p.m., Duty Medical Officer noticed that blood pressure was low. It took more than six hours to diagnose the patient condition and surgery was performed at 2.00 a.m., on 7.3.2002. Because of the negligence in attending to post operative complications, the golden period was lost. Obviously, internal bleeding continued till second surgery was performed, more serious complications developed resulting in death.

21. There is so much of socio-economic disparity in the Country. Many people live below poverty line. Majority of citizens cannot afford to have a proper meal, clothing, shelter. They cannot afford to get treatment for their ailments in private hospitals. Unless people are healthy, over all development cannot be achieved. Health and well being of citizens shall be the primary concern of the welfare State. It shall be the endeavor of the State to provide proper health care system at affordable cost. In fulfillment of its obligation to provide health care system, State has established Primary Health Care Centers, hospitals. Hapless people flock to the Government hospitals with fond hope to get treatment for their ailments. Thus, medical teams in the hospitals cannot be lethargic/unprofessional in attending to the patients. Government Hospitals cannot be treated as gateways to mortuary and then to graveyard. In most of the cases, life of a person can be saved if immediate/timely medical attention is provided. Thus, one of the primary requirements in a hospital is immediate attention to a complaint of patient. Apparently, immediate medical attention was not provided to the patient.

22. In **Dr.LAXMA BALKRISHNA JOSHI Vs. Dr TIMBAK**

BABU¹³ highlighted the duties of a Doctor:

“11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz. a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires (cf. *Halsbury's Laws of England* 3rd Edn. Vol. 26 p. 17)”.....

22.1 Perforce, negligence has three components, ‘duty’, ‘breach’, and ‘resultant damage’. State has a duty to provide health care system. It has accordingly established hospitals. Flowing from this, it has the duty to administer these hospitals effectively and shall not allow any negligence by its employees. Due to negligence of Doctors in the Government hospital it has breached this duty by not attending to petitioner’s mother in time

¹³ AIR 1969 SC 128

to save her life resulting in loss of life and irrecoverable damage to petitioner.

22.2 If the medical staff in a Government hospital are negligent in attending to a patient, it would be amounting to failure on its part in protecting the life of its citizens. The State as their employer shall have to pay for the loss caused to family member due to their negligence.

23. At this stage, it is necessary to note the opinion recorded by the Medical Board, which reads as under:

“OPINION:

After careful perusal of all the connected documents the members of the Medical Board are of the unanimous opinion that:

1. The cause of death was due to post operative hemorrhage from the pedicles, as a consequent complication of Hysterectomy Operation.

2. The complication of post operative hemorrhage from the pedicles is an inherent complication in cases of Hysterectomy Operations.

3. There is delay in diagnosing the cause for the fall of the Blood Pressure of the patient. The cause for the fall of the Blood Pressure, as due to internal bleeding i.e., hacmo peritoneum,

**was diagnosed by the duty
Surgical officer at 11.00 PM.**

**4. The delay in the diagnosis
of the cause had resulted in the
delay in surgical intervention, to
save the life of the patient.”**

24. As can be seen from paragraph 3 and 4 of the opinion of Medical Board, there was delay in diagnosing the cause for the fall of Blood Pressure (BP) of the patient. The fall of BP was on account of internal bleeding which was diagnosed by the Duty Surgical Officer only at 11 PM and delay in diagnosis of the cause had resulted in delay in surgical intervention. In paragraph-1 of the report, the Medical Board noted the recordings of BP of mother of petitioner at various intervals. A cursory reading of the said noting would show that by 6.00 PM itself BP of patient was recorded as 60/50 mm Hg and continued for one hour and later was increased little to 70/50 and later to 80/60 and at 10.15 PM the Duty Medical Officer (General Physician) noticed the condition of the patient as “ANOXIC ENCEPHALOPATHY”. Surgery was performed at 2.00 a.m next day. During the second surgery, on opening the abdomen, about 3½ liters of blood was found in the abdomen cavity. The left ovary was affected by the death of cells due to failure of blood supply (NECROSED). It is thus clear from the opinion expressed by the Medical Board that death was occasioned due to delay in diagnosis, and negligence in attending to post surgery complications with required urgency. It is also pertinent to note that in the orders issued by the Director of Medical Education on 2.12.2004, while exonerating the 5th

respondent he recognizes the negligence of duty doctors. He noted that Duty Surgical Officer's negligence caused death of patient and issued directions to the Superintendent of C.K.M Government Maternity Hospital, Warangal to issue circular to Duty Doctors and supporting staff of the Hospital, not to delay any diagnosis in surgical intervention. It is thus, beyond cavil that cause of death was on account of negligence of medical team of the respondent-State. Probably, her life could have been saved if treatment was administered to her immediately. Life of a person was snuffed out due to negligence throwing two young children in turmoil and in helpless position.

24.1 In **ACHUTRAO HARIBHAU KHODWA V. STATE OF MAHARASHTRA**¹⁴, the Supreme Court rejected the view taken by High Court that Government cannot be held liable for tortuous acts committed in a hospital. Supreme Court held:

"11. The High Court observed that the Government cannot be held liable in tort for tortious acts committed in a hospital maintained by it because it considered that maintaining and running a hospital was an exercise of the State's sovereign power. We do not think that this conclusion is correct. Running a hospital is a welfare activity undertaken by the Government but it is not an exclusive function or activity of the Government so as to be classified as one which could be regarded as being in exercise of its sovereign power. In *Kasturi Lal case* [AIR 1965 SC 1039] itself, in the passage which has been quoted hereinabove, this Court

¹⁴ (1996) 2 SCC 634

noticed that in pursuit of the welfare ideal the Government may enter into many commercial and other activities which have no relation to the traditional concept of governmental activity in exercise of sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where the members of the general public can come for treatment, cannot also be regarded as being an activity having a sovereign character. This being so, the State would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees.”

25. Petitioner lost his mother at a very young and prospective age. He was deprived of the comfort and guidance of his mother at a tender age. The loss was more severe as he lost his father earlier and his mother was alone taking care of the family.

26. The amount of suffering and mental agony that may be undergone by him cannot be described, but can be visualized, as enormous. He is made to live rest of his life with pain and anguish of losing his mother due to negligence of hospital where he hoped for better treatment. It is expedient to assuage his suffering and alleviate to a limited extent by awarding compensation.

27. The precedent decisions referred to above give clear guidance, beyond pale of doubt, the scope of jurisdiction of writ Court in awarding compensation for the illegal acts of the State.

This is a fit case to extend the long arm of justice in exercise of extraordinary reserve power and be a friend in need to victim of injustice [**Gujarat Steel Tubes Ltd's** case (supra)].

28. On the scope of quantification of compensation, it is always difficult to arrive at appropriate compensation on death of a mother. The loss and suffering of parent at young age puts a dependant son in a cauldron. Petitioner lost natural guardian who would have taken care of every aspect of petitioner and allowed him to settle in his life. He was at the corner stone of his life to mature from adolescence to a man. The loss is recurring and for a life time. Such a wound can never be healed. The loss and suffering of a son is emotional and psychological and cannot be measured in terms of money. It is only hoped that monetary component would mitigate petitioner's hardship to some extent and would give some kind of consolation to him. I am also of the opinion that the awarding of compensation should act as a deterrent to the respondent State.

29. Having regard to the fact that the incident in the instant writ petition occurred in the year 2002 and for the reasons assigned above, I am of the considered opinion that awarding a consolidated amount of 8,00,000/- (Rupees eight lakhs only) to petitioner would meet the ends of justice, mitigate the hardship undergone by the petitioner and would at least give some kind of solace to son of mother whose life was snuffed out at his young age.

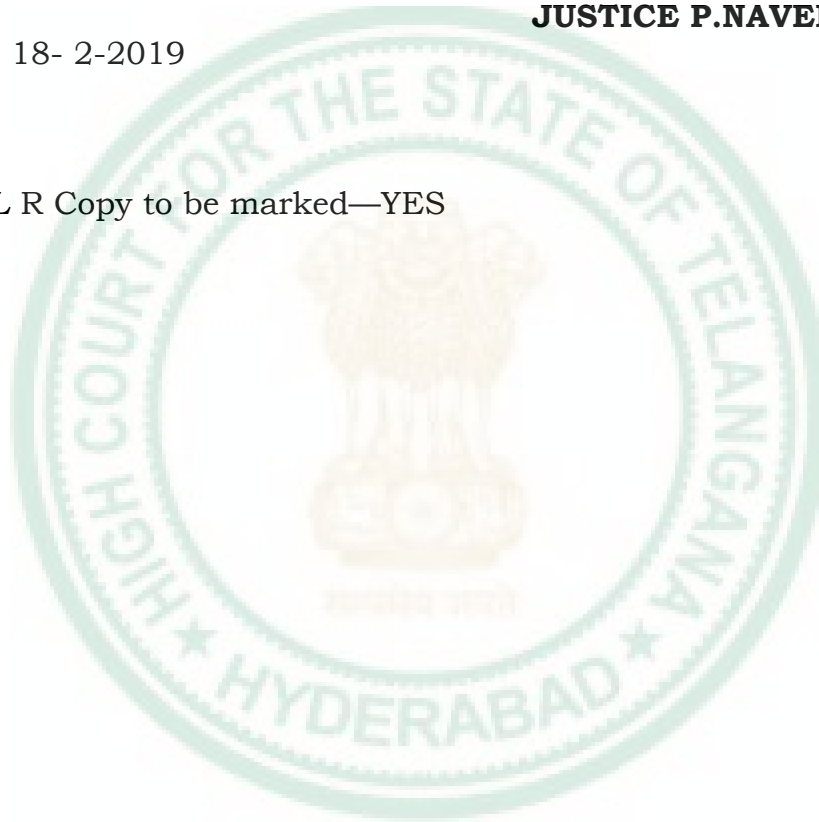
30. Writ petition is accordingly allowed. The first respondent shall pay the amount of Rs.8,00,000/- (Rupees eight lakhs only) within eight weeks from the date of receipt of copy of

this order. Any further delay in payment shall carry interest at the rate of 8% per annum till the amount is paid. Petitioner shall furnish his bank details to the first respondent through third respondent- Superintendent, C.K.M Government Maternity Hospital, Warangal within two weeks from the date of receipt of copy of this order. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

DATE: 18- 2-2019
TVK

Note : L R Copy to be marked—YES



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.13772 of 2007

Date : 18.2.2019