



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.27070 and 27072 of 2019

and

W.M.P(MD) .No.23408 of 2019

1.Chandra ... Petitioner in W.P.No.27070 of 2019
2.Soosaimuthu @ Joseph ... Petitioner in W.P.No.27072 of 2019
vs.

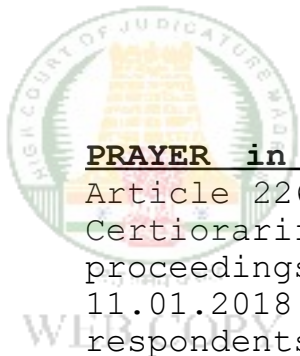
1.The Divisional Engineer (Highways)
NABARD and Village Roads
Maharaja Nagar
Tirunelveli - 11

2.The Chief Engineer
Highways Department
Chepauk
Chennai -5

3.The Government of Tamil Nadu
Represented by
The Secretary to Government
Department of Highways
Fort St.George
Chennai

... Respondents

PRAYER in W.P(MD).No.27070 of 2019 : Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent No.1 in Lr.No.608/2013/A2 dated 11.01.2018 and to quash the same and consequently directing the respondents to pay a sum of Rs.30/- lakhs as compensation to the petitioner on account of the unfortunate death of her son Joseph Gold Winster (aged 22 years) by way of accident near the works for construction of a bridge in between Adaikalapattinam and Salaiputhur Villages in Tirunelveli -Tenkasi main road (SH 39) in Tirunelveli District due to the negligence of the officials of the respondents and to take both departmental and criminal action against the concerned officials for their negligence.



PRAYER in W.P(MD).No.27072 of 2019 : Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent No.1 in Lr.No.608/2013/A2 dated 11.01.2018 and to quash the same and consequently directing the respondents to pay a sum of Rs.20/- lakhs as compensation to the petitioner on account of the unfortunate death of his son Anandakumar (aged 22 years) by way of accident near the works for construction of a bridge in between Adaikalapattinam and Salaiputhur Villages in Tirunelveli -Tenkasi main road (SH 39) in Tirunelveli District due to the negligence of the officials of the respondents and to take both departmental and criminal action against the concerned officials for their negligence.

In both petitions

For Petitioners : Mr.V.Kannan
For Respondents : Mr.M.Rajarajan
Government Advocate

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents.

2.The case of the petitioners is that an accident took place on 01.09.2012 at about 4.30 a.m in Courtallam to Tirunelveli road, in which, two persons died. The petitioners herein are the parents of the deceased. It is stated that when the petitioners' sons were coming in two motor vehicles in the said road, they dashed against the bridge construction and fell down. They suffered serious injuries and they were taken to Tirunelveli Medical College Hospital by Ambulance and died in the Hospital.

3. The specific allegation of the petitioners is that the occurrence took place purely due to the negligence on the Highways Authorities. It appears that some construction work was going on and no reflectors or sign boards were installed. Hence, the accident had taken place. The petitioners' counsel drew my attention to the paper publication in this regard. I am not in a position to straight away act on the said paper reports. Since the allegations made by the petitioners have been denied by the respondents, the writ Court may not be in a position to go into the factual controversy. The petitioners ought to file a civil suit. The petitioners apprehend that if the suit is instituted at this point of time, it may be dismissed as hit by limitation.



4.I specifically put the respondents on notice and I make it clear that if the suit is filed by the petitioners herein within a time frame, it will not be hit by limitation. It is seen that the petitioners had already filed the writ petitions in W.P.(MD).Nos. 7181 and 7182 of 2013 and the same was disposed on 24.11.2017 whereby the respondents were directed to dispose of the petitioners' representations. The impugned orders were passed on 11.01.2018. But, the copies of the same was served on the counsel only on 09.08.2018. On as much as the petitioners are litigating before this Court and it is this Court that is relegating the petitioners to file a civil suit, the petitioners cannot be non-suited on the ground of limitation. I have to necessarily take note of the fact that while the accident had taken place in the month of September 2012, the petitioners had filed the writ petitions immediately thereafter in the year 2013 itself. Therefore, the writ petitions are dismissed giving liberty to the petitioners to file a civil suit. Such a civil suit shall be instituted within one month after the Courts resume their regular functioning. If the petitioners institute the civil suit within the aforesaid period, the respondents will not be entitled to raise the point of limitation. I make it clear that the issues regarding liability and negligence are left open but the point of limitation cannot be raised by the respondents.

5.With the above observations and giving liberty to the petitioners, these writ petitions stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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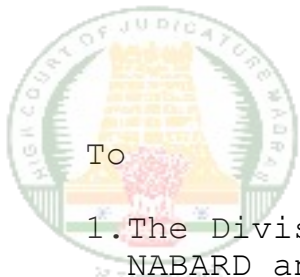
/ /2020

Sub Assistant Registrar(CS)

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Note:

1.In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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NR (20/07/2020) 4P 4C