



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.23395 of 2018

Mrs.Arokyamary

...Petitioner

Vs

1. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
 2. The Secretary to Government,
Public Health and Family Welfare,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
 3. The District Collector,
Uthagamandalam,
Nilgiris District.
 4. The Deputy Director,
Medical, Rural Health and Family Welfare Department,
Uthagamandalam,
Nilgiris District.
 5. The District Medical Officer,
Government Head Quarters Hospital,
Ooty, Nilgiris.
- ...Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order dated 20.09.2017 and 08.02.2018 passed by the 4th respondent in Na.Ka.No.250/Nee/2017 and quash the same and consequently direct the respondents to pay a sum of Rs.15,00,000/- as compensation to the petitioner for the medical negligence of the respondents leading to sterilization operation failure to the petitioner and consequent birth of disabled child namely Jerson.

For Petitioner : M/S.E.Angayarkanni
For Respondents: Mr.K.M.D.Muhilan,
Government Advocate



O R D E R

This Writ Petition has been filed by the petitioner challenging the orders dated 20.09.2017 and 08.02.2018 passed by the 4th respondent in Na.Ka.No.250/Nee/2017 and to quash the same, and consequently, to direct the respondents to pay a sum of Rs.15,00,000/- as compensation to the petitioner for the medical negligence of the respondents leading to sterilization operation failure to the petitioner and consequent birth of disabled child namely Jerson.

2. M/s.E.Angayarkanni, the learned counsel appearing for the petitioner made a submission that the petitioner is a housewife and her husband is a poor Mason and already, they have two female children, and therefore, the petitioner opted for sterilization operation, but due to negligence on the part of the fifth respondent-Hospital, the petitioner gave birth to a third male child, that too, with disability, called Lumbosacral Myelomeingocoele defect. The learned counsel for the petitioner further submits that, the petitioner also obtained second opinions from other Doctors, who have stated that, due to negligent surgery performed by the fifth respondent-Hospital, disabled boy child was born to the petitioner, and the defect could have been cured, had the fifth respondent-Hospital identified the same at the threshold, and now, the child is around 4 years and he is not in a position to walk due to his birth defects. Therefore, the petitioner made a representation seeking a compensation of Rs.15,00,000/-.

3. Mr.K.M.D.Muhilan, the learned Government Advocate for the respondents submitted that, in a case of this nature, the petitioner is entitled to only a sum of Rs.30,000/- as compensation and the compensation of Rs.15,00,000/- sought for by the petitioner is onerous.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate for the respondents.

5. In view of the submissions made on either side, this Court is of the view that these type of cases can be resolved only by the Consumer Disputes Redressal Forum and the petitioner has wrongly approached this Court, for, this Court cannot go into the disputed questions of fact whether the fifth respondent-Hospital had performed the surgery, in a negligent manner, as alleged by the petitioner, and whether the second opinion given to the petitioner by other Doctors is authentic or not.



6. In the light of the above, the Writ Petition is disposed of, granting liberty to the petitioner to file appropriate application before the Consumer Disputes Redressal Forum concerned within six months from the date of receipt of a copy of this order. If such an application is filed, the Consumer Disputes Redressal Forum concerned shall consider the case of the petitioner after affording an opportunity of personal hearing and pass appropriate orders. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

jd/sd

To

1. The Chief Secretary,
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Fort St. George, Chennai - 600 009.
2. The Secretary to Government,
Public Health and Family Welfare,
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3. The District Collector,
Uthagamandalam,
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Medical, Rural Health and Family Welfare Department,
Uthagamandalam,
The Nilgiris District.
5. The District Medical Officer,
Government Head Quarters Hospital,
Ooty, The Nilgiris.

+1cc to M/s.E.Angayarkanni, Advocate SR.No.59906

W.P.No.23395 of 2018

RSI (CO)
GMY (13/12/2021)