

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

W.P. No. 33517 of 2018

&

W.M.P. Nos. 38895 & 38896 of 2018

A. SaraswathyPetitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St. George,
Chennai - 600 009.
2. The Director,
State Municipal Administration,
Kamarajar Salai, Chepauk,
Chennai - 600 009.
3. The Assistant Director,
Municipal Administration Zonal Office,
No.5, J.G. Nagar, 1st Street,
Kumaranandapuram,
Tiruppur - 641 602.
4. The District Collector,
Tiruppur.
5. The Sub Collector,
Tiruppur.
6. The Revenue Divisional Officer,
Palladam, Tiruppur District.
7. The Municipal Commissioner,
Municipal Office,
Palladam,
Tiruppur District - 641 664.

8. The Joint Registrar of
Co-operative Society,
Tiruppur Zone, Tiruppur.

9. The Secretary,
The Agricultural Co-Operative Society (Reg.1569)
Near Palladam Bus stand, Trichy Road,
Palladam.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 7th respondent/the Commissioner, Palladam Municipality to pay compensation of Rs.50,00,000/- (Rupees Fifty lakhs only) for the act of negligence of the officials of the 7th respondent in permitting a 3 decade old toilet in the Palladam Bus Stand in Tiruppur District, to be used by the public, the walls of the toilet which collapsed upon the sole breadwinning 41 year old husband of the petitioner namely, S.Ashok kumar, who died on the spot, when he went there to attend nature's call on 12.05.2018, leaving behind two aged parents, two teenaged school going daughters and a teenaged school going son and the widowed 36 year old petitioner herself herein.

For Petitioner :: Mr.M. Purushothaman

For Respondents:: Mr.S. Kamalesh Kannan,
Govt. Advocate for R1 to R6
Mr.B. Anand for
Mr.A.S. Thambusamy for R7
Mr.Bala Ramesh for R8 & R9

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

The matter is heard through videoconferencing.

2. Without rain, there cannot be life in the world. However, rain is the cause for taking away a precious life in this case.

3. On the fateful night, i.e, on 12.05.2018, as there was heavy rain, the petitioner's husband, one Mr. Ashok Kumar, a mason, aged about 41 years, took cover under the sunshade of a toilet building in Palladam Bus Stand maintained by the 7th respondent Palladam Municipality. Due to heavy downpour, the roof of the toilet collapsed crushing the petitioner's husband to death and injuring another person, by name, Venkatesan. In this regard, an FIR was registered on 13.05.2018 in Cr.No.

498/2018 on the file of Palladam Police Station. Contending that because of negligence on the part of the 7th respondent in maintaining the toilet building, the building had collapsed, taking away the life of the petitioner's husband. Therefore, the petitioner has claimed compensation of Rs.50 lakhs.

4. A counter affidavit has been filed by the 7th respondent admitting the accident, however, contending that outside the toilet, a shade was fixed on the top of the toilet supported by iron rods, which alone collapsed and fell on the husband of the petitioner, who was taking shelter under the shade, leading to his death. The 7th respondent Municipality contended that the accident had occurred due to natural calamity and not due to any negligence on the part of the 7th respondent Municipality. Further, it is stated that the engineers of the 7th respondent inspected the toilet and checked the condition of the toilet and found that the same was in a stable condition. Therefore, the 7th respondent sought the dismissal of the writ petition.

5. Heard Mr.S. Kamalesh Kannan, learned Government Advocate for respondents 1 to 6, Mr. B. Anand for Mr.A.S. Thambusamy, learned counsel for 7th respondent, Mr.Bala Ramesh, learned Special Government Pleader for respondents 8 and 9.

6. It is evident, as per the admission made by the 7th respondent, that the accident had occurred due to the fall of shade, which was fixed on the ceiling of the toilet, resulting in the death of the petitioner's husband and injuring another person. Eventhough the 7th respondent would submit that it was a natural calamity and there was no negligence on their part and the 7th respondent is not responsible for the fall of shade, as the toilet was maintained properly and the building was in a stable and sound condition, the said contention has to be rejected for the reason that the shade had been fixed to the toilet building only by the Municipality and it cannot surface on its own. The necessity to fix the shade with iron rods has not been explained by the 7th respondent. In any event, the shade was part of the toilet building and it had been put up by the 7th respondent and therefore, the 7th respondent alone could be held negligent for the falling of the shade on the petitioner's husband. If the shade had been properly fixed, then there would have been no occasion for it to fall down. Therefore, it is the 7th respondent Municipality's negligence, due to which the accident had occurred, resulting in death of petitioner's husband and the Municipality is liable to pay compensation to the petitioner.

7. Though it is contended that a writ petition is not maintainable regarding payment of compensation, Mr. M. Purushothaman, learned counsel for the petitioner relied upon the judgment of a Division Bench of this Court reported in 2017 (2) CTC 119 (The Commissioner, Corporation of Chennai, Rippon Buildings, Chennai -600 003 V. State of Tamil Nadu, rep. by the Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai - 600 009 & another) in which a tree planted and maintained by the Corporation fell on a car resulting in loss of life. The Division Bench rejected the contention of the Corporation that it is an "Act of God" and confirmed the award of Rs.29.26 lakhs.

8. The Division Bench relied upon a number of judgments of the Honourable Supreme Court to show that writ petition under Article 226 of the Constitution of India can be invoked for payment of compensation. Public law remedy is always a liability by fixing tortious liability on the State.

9. The said judgment fully supports the case of the petitioner since there was negligence on the part of the 7th respondent, Palladam Municipality, which is a State under Article 12 of the Constitution of India. This Court has also found that there was negligence on the part of the 7th respondent to maintain the toilet and in fixing the shade properly.

10. Having found that the 7th respondent's negligence is responsible for the accident, the compensation payable has to be calculated following the formula adopted in motor accident cases.

11. The FIR dated 13.05.2018 as well as the death certificate dated 17.05.2018 would reveal that the deceased was aged about 41 years. It is stated by the petitioner in her affidavit, in paragraph No.11, that her husband was aged about 41 years and that he was a construction worker/mason and he was earning a sum of Rs. 700/- per day. The statement made in the affidavit has not been denied by the 7th respondent. It is also stated in the FIR itself, which is the earliest document, immediately after the accident, that the deceased Ashok Kumar was a construction worker. Therefore, it is proved that the deceased was aged about 41 years and he was a construction worker/mason.

12. The legal heirship certificate issued by the Revenue Authorities dated 16.07.2018 would reveal that the deceased left behind his wife, two daughters, one son and his aged mother. Since the accident occurred in the year 2018, the wages of a mason could be fixed at Rs.600/- per day as it would

have been impossible to get a mason for less than Rs.600/- per day. Considering the number of construction activities in our country, even though a mason would be able to get 30 days pay, it would be appropriate to calculate the wages for 25 days instead of 30 days and thus, the monthly income of the deceased would be $\text{Rs.}600 \times 25 = \text{Rs.}15,000$.

13. Since the deceased was aged about 41 years, in the light of the Constitution Bench judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi (2017 ACJ 2700), 30% has to be added towards future prospects. Adding 30% towards future prospects, the total monthly income of the deceased comes to,

Monthly Income	::	Rs.15,000/-
ADD: 30% towards future prospects	::	Rs.15,000/- + 30% (Rs.15,000/-)
	::	Rs.19,500/-
Annual Income	::	Rs.19,500 x 12
	::	Rs.2,34,000/-

Since the size of the family of the deceased is five consisting of wife, three children and mother, one-fourth deduction has to be made towards "Personal Expenses" instead of one-third deduction. After deducting one-fourth, the annual income will be $\text{Rs.}2,34,000/- (-) \frac{1}{4}(\text{Rs.}2,34,000/-) = \text{Rs.}1,75,500/-$

14. As per the judgment of the Honourable Apex Court in Sarla Verma & Ors V. Delhi Transport Corporation and Another reported in 2009 ACJ 1298 SC, the appropriate multiplier corresponding to the age of the deceased is 14. Accordingly, applying the said multiplier, "Loss of Dependency" works out to,

Loss of Dependency	::	Rs.1,75,500 x 14
	::	Rs.24,57,000/-

15. As per Pranay Sethi's case, the petitioner/wife is entitled to Rs.40,000/- towards "Loss of Consortium". The children of the deceased, who were minors, aged about 15 years, 13 years and 11 years have been deprived of their father's love and affection throughout their life. Therefore, a sum of Rs.50,000/- is granted to each of the children of the deceased towards "Loss of Love and Affection", which is akin to "Loss of Consortium" granted to the petitioner/wife. Similarly, the mother of the deceased is also entitled to a sum of Rs.50,000/- under the said head as she had lost her son. Therefore, the total compensation amount payable comes to,

Loss of Dependency :: Rs.24,57,000/-
Loss of Consortium :: Rs. 40,000/-
Loss of Love and
Affection :: Rs. 2,00,000/-
Total :: Rs.26,97,000/-
rounded off to :: Rs.27,00,000/-

The compensation amount shall carry interest @ 6% per annum from the date of accident, i.e, 12.05.2018.

16. Out of the said sum of Rs.27,00,000/-, the petitioner/wife would be entitled to Rs.10 lakhs along with proportionate interest, each of the children would be entitled to Rs.5 lakhs along with proportionate interest and the mother would be entitled to Rs.2 lakhs along with proportionate interest. The said amount has to be paid by the 7th respondent within a period of 8 weeks from the date of receipt of a copy of this order.

17. The writ petition is disposed of accordingly.

18. Post on 21.06.2021 "for reporting compliance".

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv
To

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St. George,
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The Agricultural Co-Operative Society (Reg.1569)
Near Palladam Bus stand, Trichy Road,
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Copy to

The Section Officer,
Writ Section, High Court,
Chennai-104.

+1cc to the Government Pleader Sr.24014
+2cc to Mr.M.Purushothaman, Advocate Sr.23755
+1cc to Mr.A.S.Tambuswamy, Advocate Sr.23694
+1cc to Mr.R.Bala Ramesh, Advocate Sr.23840

W.P. No.33517 of 2018

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srg 26/04/2021