



W.P. No.12302 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. No.12302 of 2010

K.Abdul Raheem

... Petitioner

Vs.

1.The Dean,
Government Vellore Medical College Hospital,
Vellore.

2.The Medical Superintendent,
Government Vellore Medical College Hospital,
Vellore – 11.

3.The Enquiry Officer,
Government Vellore Medical College Hospital,
Vellore – 11.

4.The Administrative Officer,
Government Vellore Medical College Hospital,
Vellore.

5.Dr.Subidhalakshmi

... Respondents

Writ petition filed under Article 226 of Constitution of India,
seeking a writ of Mandamus directing the respondents to pay a sum of



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Rs.4,00,000/- as compensation based on the representation made by petitioner on 16.04.2010.

For Petitioner : Mr.V.Kasinatha Bharathi

For Respondents : Mr.P.Sathish,
Government Advocate
for R1 to R4

R5-No appearance

ORDER

This Writ Petition has been filed by the petitioner seeking a direction to the respondents to pay a sum of Rs.4,00,000/- as compensation, based on his representation dated 16.04.2010.

2.It is the case of the petitioner that he had admitted his wife for second delivery with the first respondent hospital on 07.05.2008 at about 5.10 p.m. Since doctors have advised to perform operation for removal of a tumor, which was found in her stomach, on 02.07.2009 at about 8.30 p.m., a surgery was performed in the hospital. Thereafter, the petitioner came to know that a sponge has not been removed, while performing the cardiac surgery. Therefore, the petitioner had spent huge amount for



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giving her treatment. In this regard, the petitioner made a representation dated 16.04.2010 to the respondents requesting them to give a compensation amount of Rs.4,00,000/- due to the sufferings sustained by the entire family. As there was no response, the petitioner has filed this writ petition seeking the above prayer.

3.Counter affidavit has been filed on behalf of respondents 1 to 4 stating that the surgery was conducted perfectly and no untoward incidents have taken place during the surgery.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.The learned counsel for the petitioner submitted that it is a clear case of negligence on the part of the respondents in performing the surgery on the wife of the petitioner. But they have not come forward to pay the compensation to the petitioner till date.



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6.It could be seen that the petitioner/husband has filed this writ petition. As the aggrieved party is the wife of the petitioner, she is not before this Court. Moreover, she has not even come forward to give any representation or complaint stating that surgery has not been done properly. When it is the contention of the petitioner that surgery was not done properly, he has to produce some relevant documents to show that there was a negligence on the part of the respondents, but there is no iota of evidence or proof to substantiate that untoward incidents have taken place. Mere affidavit alone not sufficient to decide the whole issue. As the petitioner has come forward to give a complaint after 1 year and 2 months from the date of discharge from the hospital, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition stands dismissed.

7.Liberty is granted to the petitioner or his wife to file an appropriate suit or proceeding before Consumer Redressal Forum claiming compensation on the ground of medical negligence and



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establish the facts before the concerned Court. Such suit or complaint shall be filed within a period of six months from the date of receipt of a copy of this order. The time period spent in this writ petition shall be excluded by Court or Forum, taking note of the nature of relief sought.

No costs.

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Index: Yes/No
Speaking order/Non speaking order
vga

To

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N.SATHISH KUMAR,J.

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