



W.P.(MD).No.3818 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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ORDER RESERVED ON : 17.08.2022

ORDER PRONOUNCED ON : 28.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR
W.P.(MD).No.3818 of 2012 and

M.Raja

....Petitioner

Vs

1.State of Tamil Nadu
Represented by the Principal Secretary
Health Department
State of Tamil Nadu
Fort St.George
Chennai

2.The District Collector
Virudhunagar District

3.The Chief Medical Officer
Government Hospital
Srivilliputhur
Virudhunagar District

4.Dr.Meera
Gynecologist
Government Hospital
Srivilliputhur
Virudhunagar District

....Respondents

(R4 impleaded as per order dated 27.08.2012)

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to pay Rs.50/- lakhs as compensation to the petitioner and his minor sons for the death of the



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petitioner's wife and child in womb at Government Hospital, Srivilliputhur, consequently to direct the respondent No.1 to initiate necessary action against the medical officer and staff who are responsible for the death of the petitioner's wife namely Marialilly Paulin and the petitioner's unborn male child in the womb at Srivilliputhur Government Hospital.

For Petitioner	: Mr.R.Alagumani
For R1 to R3	: Mr.S.Shanmugavel Additional Government Pleader
For R4	: Mr.G.Prabhu Rajadurai

ORDER

The present writ petition has been filed seeking a mandamus directing the respondents to pay Rs.50/- lakhs as compensation to the petitioner and his minor children for the death of petitioner's wife and child in womb at third respondent hospital. The petitioner has further prayed for initiation of disciplinary proceedings as against the Medical Officer and the staff who are responsible for the death of the petitioner's wife and the child in womb.

2.The learned counsel for the petitioner has contended that the petitioner had admitted his wife for delivery in the third respondent hospital on 23.09.2011. Even after two days of admission, the petitioner's wife did not develop labour pain. Relying upon a scan report dated 28.08.2011, though the petitioner had requested for conducting Cesarean, the fourth respondent did



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not provide proper attention.

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3.The learned counsel for the petitioner had further contended that the fourth respondent who is a gynacologist had left the Hospital at around 1.30 p.m on 26.09.2011. Around 4.00 p.m on the same day, his wife developed labour pain and there was no gynacologist to attend her. Around 9.00 p.m plead fluid filled sac got opened and staff nurse has taken the petitioner's wife to the labour room. Till 10.00 p.m, the gynacologist, fourth respondent had not come back to the Hospital to attend the petitioner's wife. Hence, the petitioner went to the private hospital of the fourth respondent and cried for help and thereafter, the fourth respondent reached the Hospital. After reaching the Hospital, the fourth respondent informed that the mother and child are in good condition. However, the Hospital had declared that his wife had passed away at around 10.45 p.m.

4.According to the petitioner, if proper scan has been conducted on 24th or 25th September 2011, the life of his wife and child in womb could have been saved. That apart, the fourth respondent had left the Hospital at around 1.30 p.m on 26.09.2011, but did not return to the Hospital to attend to his wife. If she had been available at 4.00 p.m on the said date, his wife and child could have been saved.

5.The learned counsel for the petitioner has filed a rejoinder affidavit to



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the counter affidavit filed by the fourth respondent herein. In the said rejoinder affidavit, the petitioner has reiterated his contentions in the original affidavit. The petitioner had further contended that based upon the complaint lodged by the petitioner, an F.I.R was registered by the Srivilliputhur Police Station in Crime No.543 of 2011 under Section 304(A) of I.P.C as against the fourth respondent and her husband Ganesh Babu.

6.The learned counsel had further contended that based upon his complaint, disciplinary proceedings were initiated as against the fourth respondent and two other Doctors. The enquiry officer had found that the charges as against the fourth respondent were partly proved. However, the disciplinary authorities have chosen to drop further proceedings without any proper reason.

7.The learned counsel for the petitioner had further contended that the fourth respondent has placed a tablet Misoprostal 25 Mcg in the morning hours on 26.09.2011 and hence, it is the duty of the fourth respondent to continuously monitor the petitioner's wife, but she had left the Hospital by 1.30 p.m. This action of the fourth respondent shows lack of monitoring of the patient. He had further contended that the Chief Doctor during the enquiry has stated that the fourth respondent has not sought for his opinion



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relating to the petitioner's wife. The fourth respondent during enquiry had contended that she was not a qualified scan doctor and hence, she has not taken scan. If really the fourth respondent was not qualified, she should have taken the assistance of the sonologist available in the said Hospital. Hence, all the inaction on the part of the fourth respondent would clearly show that she is guilty of medical negligence and the respondents 1 to 3 herein are vicariously liable for the same. Hence, he prayed for allowing the writ petition and pay compensation to the extent of Rs.50/- lakhs.

8.Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 had contended that the petitioner's wife was admitted to the Hospital only on 24.09.2011 at 10.20 a.m and not on 23.09.2011 as contended by the writ petitioner. The learned Additional Government Pleader had further contended that the fourth respondent is a duty Doctor between 7.30 am to 1.30 p.m on 26.09.2011. The fourth respondent will be a call duty Doctor between 1.30 p.m on 26.09.2011 to 7.30 a.m on 27.09.2011. Hence, the fourth respondent could not be attributed with any negligence when she left the Hospital by 1.30 p.m on 26.09.2011. The respondents 1 to 3 further contended that the petitioner's wife did not develop labour pain at 4.00 p.m but plead fluid filled sac got opened only at 10.10 p.m and she was given proper treatment in the labour room. However, the petitioner's wife developed



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chest pain and giddiness. First aid was given by the duty Doctor namely Dr.R.Mekala and she intimated to the fourth respondent at 10.15 p.m. The fourth respondent came to the Hospital at 10.25 p.m and provided necessary treatment to save the life of the petitioner's wife. However, the petitioner's wife had died at 10.35 p.m on 26.09.2011 due to Amniotic Fluid Embolism. The said condition cannot be predicted and it can never be prevented. Hence, the respondents cannot be found fault with or alleged with medical negligence in treating the petitioner's wife. Hence, he prayed for dismissal of the writ petition.

9.The fourth respondent had filed a counter affidavit and contended that she was on leave on 24.09.2011 and hence, she attended to the petitioner's wife only on 25.09.2011. The fourth respondent had further contended from the best of her observation, she felt that the petitioner's wife could deliver baby through normal delivery and hence, she did not want to undergo any scan as there was no complication in the first 2 deliveries. She had further contended that she has taken a professional decision in best interest of the patient and the same could not be taken as an act of negligence. Only considering the said facts, the disciplinary proceedings as against her was dropped.

10.The fourth respondent has also filed an additional counter in which



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she has contended that she was on call duty from 1.30 p.m on 26.09.2011 to 7.30 a.m on 27.09.2011. Hence, her absence after 1.30 p.m on 26.09.2011 cannot be found fault with. As and when she is called for, she is duty bound to attend the patients. She was called by duty Doctor at around 10.15 p.m on 26.09.2011 and she immediately attended the patient. However, when she reached the Hospital, the patient had developed labour pain and rupture of membranes and developed complications. She has also disputed the finding in the enquiry report. Hence, she prayed for dismissal of the writ petition.

11. I have considered the submissions made on either side and perused the typed set of papers.

12. The petitioner has contended that she has admitted his wife on 23.09.2011 in the third respondent Hospital for delivery. However, the respondents have disputed the said fact and contended that the petitioner's wife was admitted to the third respondent Hospital only on 24.09.2011 at 10.20 a.m. The medical records of the third respondent Hospital clearly indicate that the petitioner's wife was admitted only at 10.20 a.m on 24.09.2011. The petitioner himself has lodged a complaint before the Srivilliputhur Police Station on 26.09.2011 alleging medical negligence as against the fourth respondent herein. In the said complaint, he has specifically



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contended that he has admitted his wife in the third respondent Hospital on 24.09.2011. Hence, it is clear that the petitioner's wife was admitted to the third respondent Hospital only on 24.09.2011 and not on 23.09.2011.

13.The main contention of the writ petitioner is that the petitioner's wife has undergone a scan in a private Scan Centre on 28.08.2011. As per the said Scan report, the expected date of delivery was 22.09.2011. When he had admitted his client in the Hospital already, the expected date of delivery had crossed as per the said Scan report and hence, the Doctors should have been taken immediate steps for inducing labour pain for normal delivery or go in for a Cesarean operation. Had this been done in time, the mother and child in womb would have saved. The respondents 1 to 3 in the counter affidavit have not responded to the said allegation. The fourth respondent in her original counter had contended that the condition of the mother and child was normal. Since the petitioner's wife had delivered first 2 child through normal delivery, in the best of her interest, she felt that the 3rd child could also be delivered through normal delivery and hence, the scan was not suggested.

14.The fourth respondent had further contended that in an attempt for normal delivery, she did stripping of membrane to induce pain in the morning hours on 25.09.2011. Since her duty hours was over, she left the Hospital by



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1.30 p.m. From 1.30 p.m on 26.09.2011 and to 7.30 p.m on 27.09.2011, she was only a call duty Doctor and she attended the patient whenever called during emergency. She was called citing emergency at about 10.15 p.m on 26.09.2011. She reached the Hospital immediately but she found that the patient had developed complications. The death occurred due to amniotic fluid embolism. The said situation cannot be predicted and hence, the medical negligence cannot be attributed to the fourth respondent.

15.A narration of the above said facts would clearly indicate that the fourth respondent was duty Doctor between 7.30 a.m and 1.30 p.m on 25.09.2011 and she had attended to the patient. After duty hours, she has left the Hospital. Thereafter, the fourth respondent was called by the then duty Doctor only on 10.15 p.m citing emergency. Immediately after reaching the Hospital, she had found that the patient had developed complications and the she died by 10.30 p.m. Hence, the said fact would clearly indicate that medical negligence cannot be attributed to the fourth respondent herein.

16.Even as per the counter affidavit filed by the respondents 1 to 3 herein, the plead fluid filled sac had got opened up only around 10.10 p.m and the fourth respondent was informed at 10.15 p.m and she reached the Hospital at about 10.25 p.m. By that time, the patient had developed



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Amniotic Fluid Embolism. Though the petitioner has contended that the petitioner's wife had developed labour pain at around 4.00 p.m on 26.09.2011, the medical records does not disclose so.

17. The Medical Officer in the third respondent Hospital should have closely monitored the patient, especially when stripping of membrane had been done in the morning hours on 26.09.2011. There seems to be a complete lack of co-ordination between the medical staff and the nursing staff in taking care of the patient. Even as per the counter affidavit filed by the fourth respondent Doctor, when the petitioner's wife was admitted, both the mother and child were healthy. Hence, it is clear that only due to lack of co-ordination and proper attention on the part of the medical and nursing staff of the third respondent Hospital, the petitioner's wife had passed away.

18. Though this Court is not in a position to arrive at a finding as against any specific individual Doctor, this Court can record a finding that the healthy mother and healthy child in the womb lost their life due to lethargic attitude on the part of the third respondent Hospital. The Government of Tamil Nadu has passed G.O.Ms.No.81 Health and Family Welfare (E1) Department, dated 25.04.2003 for creation of a corpus fund to make payment of compensation award by the Court arising out of medical mishaps. This



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Court has already arrived at a finding that in view of improper co-ordination between the medical and nursing staff of the third respondent Hospital, the unfortunate death of the petitioner's wife has taken place. Though no individual could be held liable, the Government is liable to pay compensation. The petitioner's wife had died leaving behind two minor children. Out the said minor children one of them is a special child.

19.Considering the above said facts, this Court is inclined to award compensation of a sum of Rs.10/- lakhs to be paid from and out of the above said corpus fund. Since this Court has already arrived at a finding, no individual Doctor could be held responsible, the same shall not be recovered from any one of them.

20.In view of the above said facts, this writ petition is partly allowed with a direction to the first respondent herein to pay compensation of a sum of Rs.10/- lakhs to the writ petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.

28.10.2022

Internet : Yes/No
Index : Yes/No
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To



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State of Tamil Nadu
Health Department
State of Tamil Nadu
Fort St.George
Chennai
- 2.The District Collector
Virudhunagar District
- 3.The Chief Medical Officer
Government Hospital
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.3818 of 2012 and

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