



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.08.2022

Pronounced on : 14.09.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.4082 of 2021

S.Selvakumar

... Petitioner

v.

- 1.State of Tamil Nadu,
Rep.by its Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.
- 2.The Director,
Medical and Rural Health Services,
Anna Salai, Teynampet, Chennai.
- 3.The District Collector, Madurai, Madurai District.
- 4.The Deputy Director of Medical Services,
Madurai District, Madurai.
- 5.The Dean, Madurai Rajaji Government Hospital,
Madurai.
- 6.HOD of Orthopedics,
Dept of Orthopedics and Traumatology,
Trauma Care Centre,
Government Rajaji Hospital Madurai
Medical College,
Madurai – 20.



7.The Inspector of Police,
Alanganallur Police Station, Madurai.

(R7 suo motu impleaded vide court order
dated 23.08.2022)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to provide fair amount of compensation to the petitioner for the negligent treatment given to the petitioner on 19.07.2020 to 21.07.2020 at Government Rajaji Hospital, Madurai.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.M.Prakash,
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner is an young man aged about 22 years. He is an engineering student. His father is a coolie. The petitioner belongs to Scheduled Caste (Arunthathiyar) community. It is at the bottom most rung of the social hierarchy.



3.The petitioner was waiting for his brother on 19.07.2020 at about 09.15 A.M. When a group of four persons approached him and asked him to give his mobile phone. The petitioner wanted to know as to why they were asking his mobile phone. Angered by the disinclination of the petitioner, two of the persons attacked him with a weapon on his left hand and right leg. Crime No.1417 of 2020 was registered on the file of the Alanganallur Police Station under Section 394 of IPC. The petitioner has rushed to primary health centre at Kulamangalam and thereafter shifted to Government Rajaji Medical College Hospital, Madurai. He was moved from the casualty ward to Orthopedics ward. He was discharged on 20.07.2020 at 02.00 P.M. After the petitioner went home, he developed severe pain and he returned again on 21.07.2020 at about 04.00 P.M. He suggested amputation and was eventually discharged only on 11.08.2020.

4.The specific case of the petitioner is that had he been given proper medical treatment on 19.07.2020 and if had he not been discharged on 20.07.2020, the amputation of his right leg upto knee level could have been avoided. His allegation is that the hospital authorities had been thoroughly negligent in providing medical treatment. He complains of violation of his right under Article 21 of the Constitution of India. He therefore wants appropriate compensation to be paid to him.



5.The hospital authorities have filed counter affidavit. It is claimed therein that all admission protocols were followed and proper medical treatment was provided. The petitioner's condition was evaluated on 20.07.2020 during ward rounds and the parameters were found to be normal. That is why, the petitioner was discharged on his own request on 20.07.2020 at 02.00 P.M. Since the petitioner returned to the hospital on the next day with complaints of increasing pain, he was re-admitted and it was diagnosed that gangrene had set in on right lower limb. After getting opinion from the vascular surgeon, left with no other option, amputation was carried out as a life saving measure.

6.The stand of the fifth respondent is that such condition can develop following compound fractures and it may take hours to weeks after the initial trauma and inoculation. The categorical assertion of the fifth respondent is that the discharge of the petitioner on 20.07.2020 had nothing to do with the subsequent development of gangrene. The allegations of medical negligence have been denied.

7.I carefully considered the rival contentions and went through the materials on record. I have no doubt in my mind that the petitioner would not have requested for discharge on 20.07.2020. I take judicial notice of the fact



that Covid-19 was at its peak during July – 2020 and that beds in government hospitals were in acute scarcity. It is therefore possible that the writ petitioner was discharged since his parameters were apparently normal. While I do accept the contention of the petitioner's counsel that the discharge of the petitioner was not proper, I am not in a position to come to a conclusion that this was the cause for amputation. It is possible that even if the petitioner had continued to be in the government hospital, gangrene could have still developed and the amputation would have been inevitable.

8. There is nothing on record to show that improper treatment was given to the petitioner. Only if the court can come to a positive conclusion based on unimpeachable materials that there was medical negligence and that it led to certain adverse consequences to the victim, the State can be directed to compensate the victim. On the sole ground that amputation had to be done on account of the development of gangrene, it is not possible to infer that it was only on account of improper medical treatment. There is no necessary connection between the two.

9. At the same time, the petitioner cannot be left with remedy less. The petitioner is an innocent college going student. He was waiting for his brother to go to some other place. A group of criminals happened to pass-by. They



wanted the petitioner's mobile phone to make some phone calls. The petitioner naturally was hesitant to part with his mobile phone. The enraged criminals brutally attacked the petitioner without any justification. That had led to the amputation of right lower limb of the petitioner. Victim of crimes have to be compensated. As already pointed out, the petitioner belongs to Scheduled Caste (Arunthathiyar) community. It is not necessary that compensation must be paid only at the end of the trial. Criminal cases take years to get concluded. When facts are clear, payment of compensation will have to be a matter of course. The loss faced by the petitioner is humongous. His marital prospects obviously will be affected. The petitioner might have wanted to join the police force or the military. Those chances are foreclosed forever. The pain and suffering undergone by him can very well be understood. Considering all these aspects, I direct the respondents 1 and 3 to take appropriate steps to ensure that the petitioner is paid a sum of Rs. 10.00 lacs within a period of twelve weeks from the date of receipt of copy of the order. The respondents 1 and 3 can draw the said amount either from the victim compensation fund or the fund meant for providing compensation to victims of offence under SC/ST Act. The appropriate modality can be decided by R1 and R3. But a sum of Rs.10.00 lacs shall be paid to the petitioner within a period of twelve weeks from the date of receipt of copy of the order.



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10. The writ petition is allowed. No costs.

14.09.2022

skm

Issue order copy on 27.09.2022

To

1. The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.
2. The Director, Medical and Rural Health Services,
Anna Salai, Teynampet, Chennai.
3. The District Collector, Madurai, Madurai District.
4. The Deputy Director of Medical Services, Madurai District, Madurai.
5. The Dean, Madurai Rajaji Government Hospital, Madurai.
6. HOD of Orthopedics, Dept of Orthopedics and Traumatology,
Trauma Care Centre, Government Rajaji Hospital Madurai
Medical College, Madurai – 20.
7. The Inspector of Police,
Alanganallur Police Station, Madurai.



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G.R.SWAMINATHAN, J.

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