



W.P(MD)No.16857 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16857 of 2019

N.Sheeba

... Petitioner

Vs.

1.The Secretary,
Government of Tamilnadu,
Health and Family Welfare Department,
Chennai.

2.The Dean,
Government Medical College Hospital,
Tirunelveli District.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

... 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 pay a sum of Rs.20,00,000/- (Twenty Lakhs Only) by way of compensation for the negligent act of the 2nd respondent hospital doctors and consequently to provide better treatment to the petitioner and to take necessary departmental action against them based on the petitioner's representation dated 20.06.2019 within a time stipulated by this Court.



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For Petitioner : Mr.M.Maran

For Respondents : Mrs.S.Jaya Priya,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner got married in the year 2010. She gave birth to a male child in the year 2011. She conceived again and gave birth to a second child on 17.06.2014. The petitioner underwent family planning operation in August 2014 in the second respondent hospital. The petitioner became pregnant in the year 2019. Contending that conception and pregnancy resulted on account of negligent performance of tubectomy serialization, the petitioner submitted a representation demanding compensation. Since it was not considered, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for. She also wants departmental action to be initiated against the doctors who performed the operation.



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4.The respondents have filed a detailed counter affidavit and also typed set of papers. The learned Government Advocate took me through the contents. She pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned Government Advocate, merely because a woman undergoes family planning operation that does not mean that she would not conceive again. This is because any family planning operation has a marginal rate of failure. This has been medically accepted all over the world. In the counter affidavit, there is reference to several standard textbooks indicating that such sterilization procedures are not always 100% successful whatever be the technique. That is why, the government has also issued indemnity schemes. Even in the consent form signed by the patient, there is an acknowledgment that the operation can fail. The Hon'ble Supreme Court in the decision reported in **AIR 2005 SC 3280**

(State of Punjab Vs. Shiv Ram and Others) held as follows:-

“30.The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of



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having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.”

6.The petitioner would have realized even within the second month that she was pregnant. If she did not want the child, she could have very well terminated the pregnancy. Not having done so, the petitioner cannot claim compensation from the respondents for the cost of bringing up the child. The materials on record are absolutely insufficient to come to the conclusion that the doctor who performed the operation was negligent. Negligence cannot be presumed solely from the fact that the petitioner conceived again. This is for the reason that in certain rare and exceptional cases, even if the operation had been performed in a proper manner, it can still fail. However, the indemnity scheme issued by the Government provides for payment of Rs.30,000/- for failure of sterilization. This amount should have been paid to the writ petitioner in the year 2019 itself. In all fairness, the respondents should have acknowledged the claim and paid a sum of Rs.30,000/- to the petitioner after verifying the facts set out in the representation. They have not done so. Therefore, the respondents must not only pay the indemnity scheme amount but also the cost of this litigation. I, therefore, direct the respondents to pay a sum of Rs.50,000/- to the writ petitioner.



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6.The writ petition is partly allowed. No costs.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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