



W.P.No.19589 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.11.2022

Pronounced on : 05.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

W.P.No.19589 of 2013

and

M.P.No.1 of 2013

V.Arthanari

... Petitioner

Vs.

1.The State of Tamil Nadu

Represented by the Secretary to Government
School Education Department,
Secretariat,
Fort St. George,
Chennai.

2.The Director of School Education,
DPI Compound,
Nungampakkam,
Chennai.

3.The Assistant Elementary Education Officer,
District Elementary Education Office,
Erumapatti,
Namakkal District.

4.Thenmozhi,
Head Master-through Assistant Elementary Officer,
Erumapatti,
Namakkal District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents jointly or severally to pay a sum of Rs.5,00,000/- as compensation for the death of the petitioner's son Goutham Raja who died on 06.01.2004 due to the negligence of the staff and headmistress at Panchayat Union Primary School, Perumapatti Bommasamuthram, Namakkal District, on 06.01.2004.

For Petitioner : Mr.T.Mohan
for Mr.S.Anbazhagan

For R1 to R3 : Mr.M.S.Premkumar
Government Advocate

For R4 : No appearance

ORDER

The above writ petition is filed for issuance of Writ of Mandamus directing the respondents jointly or severally to pay a sum of Rs.5,00,000/- as compensation for the death of petitioner's son Goutham Raja, who died on 06.01.2004, due to the negligence of the Headmistress and staff of Panchayat Union Primary School, Perumapatti Bommasamuthram, Namakkal District.

2.The writ petitioner is the father of minor by name Goutham Raja, who died on 06.01.2004 on account of scorpion bite, when he was in School.



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The petitioner's son was 9 years old at the time of his death and was studying in V Std. in a Panchayat Union School in which the 4th respondent was the Headmistress. The others are the official respondents. The 1st respondent is the State who has been impleaded as the petitioner claims compensation for the death of his son on account of the negligence of the employees of the State who are directly responsible. The 2nd and 3rd respondents are officials of Education Department under whose supervision/control the 4th respondent School is functioning.

3. On 06.01.2004, the petitioner's son went to School as usual. It is the case of the petitioner that the 4th respondent, the Headmistress of the School, compelled the petitioner's son to clean the School premises and that during cleaning process, the petitioner's son was asked to bring a rope from a carton box. It is stated further that a scorpion in the carton box stung petitioner's son when he tried to take a rope from the box. The case of the petitioner is that no proper and immediate steps were taken by the 4th respondent or any of the staff in the School to give his son First Aid or immediate treatment. Though the scorpion bite can also be fatal and the poison is likely to spread very fast, the petitioner complained that his son, who fainted after the scorpion bite, was not taken to hospital in a private



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vehicle. Instead, it is alleged that the School authorities waited for about four hours for a Town Bus to take him to the hospital. The petitioner's son was admitted in the hospital on 06.01.2004 and his son expired on the next day, i.e., on 07.01.2004 at around 10.45 p.m.

4.It is the further case of the petitioner that he wrote several representations to various authorities seeking compensation. His representation to the Hon'ble Chief Minister's Grievance Cell was forwarded to the 3rd respondent and the 3rd respondent, by letter dated 02.09.2005, rejected the petitioner's claim on the ground that there is no provision under the Rules applicable for the grant of compensation by Department. One of the representations to the Public Grievance Redressal Cell was forwarded to the Tahsildar. The Tahsildar also rejected the petitioner's claim on the ground that the petitioner's son was not an earning member. The petitioner filed a consumer complaint before District Forum at Namakkal. Though the said complaint was taken on file in C.C.No.1 of 2006 and a sum of Rs.2,00,000/- was awarded as compensation by order dated 29.07.2009, the 4th respondent filed an appeal against the order and the State Consumer Disputes Redressal Commission at Chennai allowed the appeal in F.A.No.262 of 2009 dated 18.07.2011 on the ground that a claim of this



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in the care of parents, legal guardian or any other person who has the care of the child.

6.A counter affidavit is filed by the 3rd respondent. It is to be noted that, in the counter affidavit filed by the 3rd respondent, there is no denial of the incident dated 06.01.2004 and the death of petitioner's son due to scorpion bite while the petitioner's son was in the School premises, except the averments in Para No.4, wherein it is stated by the 3rd respondent that there was no negligence or dereliction of duty on the part of officials or teachers and that the incident is an act of God and that the student was never asked to clean the place or class room as contended by the petitioner. However, the petitioner's version about the incident, as a whole, is not in dispute. The 3rd respondent admitted how the petitioner's representation was dealt by the officials and stated that the petitioner is not entitled to any amount as compensation, as the petitioner's son was not an earning member, and there is no provision for compensating the petitioner under any Statute or welfare scheme. In the counter affidavit, it seen that the 3rd respondent is convinced that the Education Department cannot be held liable as there is no provision to provide financial assistance to the injured or persons who suffered loss on account of similar incidents in Schools or buildings belong



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to the State. Referring to the disposal of the complaint by the State Consumer Forum in F.A.No.262 of 2009, it is stated that the present writ petition claiming compensation on account of the death of petitioner's son is not permissible in law.

7.First of all, with regard to the details furnished by the petitioner in the affidavit filed by him, the 4th respondent who is competent to deny the statements, has not filed a counter affidavit denying the averments. The 3rd respondent has not denied specifically the delay in taking the petitioner's son to a hospital immediately after the scorpion bite. It is stated that the School authorities waited about four hours for the Town Bus to take the petitioner's son to the hospital. It is in the circumstances, whether the incident took place when the petitioner's son was cleaning the School premises or otherwise, the contention that the petitioner's son could have been saved if proper medical treatment or First Aid was given immediately after the incident, cannot be ignored. The fact that a young boy of 9 years died in the School premises during School hours due to scorpion bite, is not disputed. The 4th respondent is the custodian of the students and also the staff of School are responsible to take care of the students who are studying in the School. It is not disputed that the Government of India is a signatory to the



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United Nations Convention on Child Rights. Articles 6, 19 and 28(2) of the

Convention read as follows :

“Art.6 :

- 1. States parties recognize that every child has the inherent rights of life.*
- 2. States parties shall ensure to the maximum extent possible the survival and development of the child.*

Art.19 :

- 1. States parties shall take all appropriate legislative, administrative, school and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardian(s) or any other person who has the care of the child.*
- 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up instances of child maltreatment described hereto fore, and as appropriate, for judicial involvement.*

Art.28(2) :

- 1. States parties shall take all appropriate measures to ensure that school discipline is administered in a manner*



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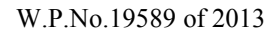


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consistent with the Child's human dignity and in conformity with the Present Convention.”

8. Due to the negligence of 4th respondent and the staff working in the School, the petitioner states that he has lost his son. The State is liable to compensate for the loss suffered by its citizen due to the negligence of its employees. This Court, on the facts admitted, can infer that the petitioner has lost his son due to the delay in taking the petitioner's son to the hospital. Scorpion bite in a class room during School hours shows how the premises is maintained by the School authorities.

9. Mr. M.S. Premkumar, learned Government Advocate, appearing for the respondents 1 to 3, did not produce any material to discredit the contentions of the petitioner on the nature of incident resulting in the death of petitioner's son. The submission of learned Government Advocate appearing for the respondents 1 to 3 that the matter involves disputed questions of facts and that therefore, the petitioner should be directed to approach the Civil Court, cannot be appreciated. In this case, this Court has already found that the petitioner has proved the negligence on the part of the respondents. The liability of the State for the negligence of the employees of the State follows on the admitted facts and the principles established by



10. It is to be noted that the petitioner's son died in 2004. However, petition came to be filed only in the year 2013 after several applications before various authorities. This Court has also taken note of that, after the disposal of the appeal preferred by the 4th respondent to the State Consumer Forum in the year 2011, the petitioner submitted an application to the respondents 1 to 3 only in 2013. Hence, it can be said that the writ petition is liable to be dismissed *in limine* on the ground of delay. However, the petitioner states that he is a poor daily wage employee and therefore, his resources are limited and his economic condition may not enable him to fight against the State or its instrumentalities. Delay or inordinate filing of the writ petition can also be a factor to non-suit the petitioner if delay or laches on the part of the petitioner is likely to cause serious prejudice to the other side. However, it is well settled that the State cannot be dismissed on the ground of limitation or laches when facts are not in dispute.



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11.Learned counsel appearing for the petitioner has relied upon various judgments of this Court and Hon'ble Supreme Court in different contexts where writ petitions were filed under Article 226 of the Constitution of India claiming compensation for the monetary loss or the loss of life as a result of accident due to the negligence of the State or employees of the State are allowed. It is well settled that the legal heirs of victims of accidents or death due to negligence on the part of State authorities can claim compensation in writ proceedings. If there is no impediment in entertaining a writ petition on account of the factual issues/disputes and where there was negligence, Courts have expressed uniformly that, in appropriate cases, payment of compensation can be ordered. The Hon'ble Supreme Court, in ***M.S.Grewal and another v. Deep Chand Sood and others*** reported in ***(2001) 8 SCC 151***, awarded a sum of Rs.5 Lakhs each for the death of 14 students who died due to drowning in a river where they were taken on picnic organised by the School authorities. There were several similar cases, wherein, this Court, in exercise of its powers under Article 226 of the Constitution of India, directed the State to pay a huge sum as compensation for the death or bodily injury of victims due to the negligence of the Government hospital authorities. The following are some of the precedents this Court has noticed :



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- i. G.Ravindran v. State of Tamil Nadu represented by its Secretary, Education, Science and Technology Department, Chennai and others [2015 (5) MLJ 154]*
- ii. K.Veeraraghavan v. Secretary to Government, School Education Department, Secretariat, Chennai and others [2014 (5) MLJ 479]*
- iii. D.Narayanasamy v. District Collector, Collectorate, Tiruvarur and others [2014 (4) MLJ 26]*
- iv. A.Pavadai v. The Revenue Divisional Officer, Villupuram and others [2014 (1) CWC 516]*
- v. Minor Muthulakshmi v. Government of Tamil Nadu and others [2012 AIR (Madras) 189]*
- vi. P.N.Kanagaraj v. State of Tamil Nadu and others [2008 (6) CTC 144]*
- vii. V.Subramaniam v. The State of Tamil Nadu represented by its Secretary to Government, Department of Education, Fort St. George, Chennai and others [2009 (1) CTC 434]*
- viii. C.Chinnathambi v. The State of Tamil Nadu and others [2001 AIR (Madras) 35]*
- ix. State of Rajasthan v. Mst.Vidhyawati and another [1962 AIR (SC) 933]*

12.The respondents questioned the quantum of compensation mainly on the ground that the deceased is only a minor and that he is not an earning member. The petitioner's son died on 07.01.2004. When this Court



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has already held that the respondents are liable and responsible for the accident and death of minor son of petitioner, the petitioner is entitled for compensation to be determined on the date of representation or on date of writ petition. In the present case, though the victim was a minor, the petitioner is still entitled to get compensation in terms of the principles followed for awarding compensation to the dependants of victims of motor accidents. Even in respect of death of minor who is not an earning member, Courts have awarded compensation on the basis of notional income, of course, after deducting a sizeable percentage towards personal expenses. This writ petition is filed in 2013 and the liability can only be from the date of writ petition. By taking any standard, this Court is unable to find any sum which can be lesser than a sum of Rs.5,00,000/-. The petitioner, who is the legal guardian of the deceased, can claim compensation for himself and the mother of deceased who is also the legal heir of deceased.

13.The next submission of the learned counsel appearing for the respondents 1 to 3 is regarding interest. It is seen in several cases that compensation is awarded with interest @ 12% p.a. and in all cases of motor accidents, normal interest @ 7.5% p.a. is awarded from the date of accident till the date of realisation of the compensation. Considering the nature of the



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case, this Court finds that the petitioner is also entitled to interest @ 7.5% p.a. from the date of the writ petition.

14.As a result, this writ petition is allowed and the respondents 1 to 3 are directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation with interest @ 7.5% p.a. from the date of writ petition, i.e., 16.07.2013, till the date of payment. The petitioner (father of the deceased) and his wife (mother of the deceased), who are equally entitled to compensation, shall take the entire amount to be paid by the respondents 1 to 3, in equal proportion. No costs. Consequently, connected miscellaneous petition is closed.

05.06.2023

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

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School Education Department,
Secretariat,
Fort St. George,
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S.S. SUNDAR, J.

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