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W.P.No.26906 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.26906 of 2011

V.Sivaprakash

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Petitioner

VS

1. The Secretary
Department of Health
Secretariat, Chennai.
2. The Assistant Director
Health Department
Saidapet, Chennai – 600 015.
3. The District Collector
Kancheepuram Collector Office
Kancheepuram.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first and second respondents to pay compensation to the tune of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the death of the petitioner's child, who died at the time of the delivery of the petitioner's wife due to the negligence of the staffs, nurse and doctors at Government Primary Health Centre at Madras on 09.05.2011.

[prayer amended vide order dated 21.12.2011 in
M.P.No.1 of 2011 in W.P.No.26906 of 2011]

For Petitioner : Mr.K.Thilageshwaran

For Respondents : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.S.Ravichandran
Additional Government Pleader
for R1 to R3



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ORDER

The writ petition has been instituted seeking compensation on the ground of medical negligence.

2. The learned Additional Advocate General brought to the notice of this Court that a criminal case has been registered against the persons concerned and the trial is in progress. The learned Additional Advocate General would further contend that, in the event of establishing any such medical negligence before the Criminal Court, the petitioner is entitled for compensation under Section 357 of the Criminal Procedure Code. Therefore, the petitioner may seek compensation based on the said provision.

3. The learned counsel for the petitioner countered by stating that beyond the relief available to the petitioner under Section 357, the petitioner is entitled to seek compensation under Article 21 of the Constitution of India, since it is a medical negligence, which is a serious allegation. The right to claim under Article 21 of the Constitution of India need not be denied to the petitioner and therefore, the writ petition is to be considered.



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4. No doubt, the petitioner may seek compensation either under Section 357 or under Article 21 or by instituting a suit by establishing medical negligence or otherwise. All such available remedy need not be denied to the petitioner. However, the question arises whether, at this point of time, this Court can decide the issue regarding medical negligence and give a finding so as to consider the compensation or to determine the quantum of compensation to be paid to the writ petitioner. Such an adjudication cannot be done in a writ proceedings at this stage, since trial is in progress.

5. Parallel consideration would cause prejudice to either of the parties, since the disputed issue cannot be decided in the absence of trial natured proceedings. Therefore, the petitioner is given liberty to institute the proceedings after completion of trial, so as to get a clear finding in respect of the allegations raised by the petitioners and the factors proved during the trial in a criminal proceedings.

6. This being the factum, the petitioner is at liberty to file a fresh writ petition or any other proceedings, which are all available to the petitioner for the purpose of seeking compensation before the appropriate forum after the disposal of the criminal case registered against the persons.



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In the event of instituting any fresh proceedings after the disposal of the criminal case, such proceedings need not be rejected merely on the ground of delay and it is to be decided on merits.

7. With these directions, the writ petition is disposed of. There will be no order as to costs.

06.04.2023

Index : Yes/No
Neutral Citation : Yes/No

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S.M. SUBRAMANIAM, J.

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