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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.33945 of 2019

K.Thirumurugan

... petitioner

-Vs-

1.The Secretary to Government,
Home Department,
Secretariat, Chennai-9.

2. The District Collector,
Salem District, Salem.

3. The Additional Director of Panchayat,
Office of the Collectorate,
Salem District, Salem.

4. The Revenue Divisional Officer,
Salem Revenue Division, Salem.

5. The Block Development Officer,
Puluthikottai Panchayat, Salem District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance of Writs of Certiorarified Mandamus calling for the records relating to the order dated 23.01.2023 in Na.Ka.No.1026/2021/A6 passed by the third respondent/Additional Director of Panchayat, Salem and quash the same.

(Prayer suo motu amended vide order dated 20.02.2023 in W.P.No.33945/2019)



For petitioner : Mr. M.Senthil Kumar

For Respondent : Mr.U.Bharanidharan, SGP RR1 to 4
Mr.K.Ravikumar R5

ORDER

This petition has been filed seeking to quash the order dated 23.01.2023 in Na.Ka.No.1026/2021/A6 passed by the third respondent/Additional Director of Panchayat, Salem.

2. It is the case of the petitioner that the petitioner is having a male child namely Hariprasad aged about three years old and the child was studying in the Anganwadi School which is under control of the 4th respondent. On 29.08.2019, the petitioner's child, while playing in the school, a steel gate fell on him and got grievous injuries. Immediately, the child was admitted in hospital and taken treatment. In the meanwhile, the petitioner's wife lodged a complaint against the Anganwadi teacher Malarkodi and Assistant Rani. On 16.10.2019, the petitioner's son died. Hence, the petitioner made a representation dated 04.11.2019 to the respondents requesting to take action against the 5th respondent and to grant compensation of the death of his son for a sum of Rs.50,00,000/- to him. After receiving his request, the respondents have issued the impugned order dated 23.01.2023. Challenging the same, the present writ petition has been filed.



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3. The learned counsel for the petitioner vehemently submitted that due to negligence on the part of the respondents 4 & 5, the child has been died. Therefore, the petitioner is entitled to get compensation. Further, the petitioner is doing collie work and earning very meager amount. For the treatment of his son, the petitioner has mortgaged a property and spent more money. However, in this regard, the State Government has already paid a sum of Rs.1,00,000/- in favour of the petitioner, which is very meager. This Court may direct the respondents to grant compensation to the petitioner for a sum of Rs.50,00,000/-.

4. The learned Government Advocate appearing for the respondents submitted that in this connection, the petitioner made complaint before the Valapadi Police Station and the same was registered as Crime No.268/2019 under Section 336 and 338 of IPC. The Anganwadi worker and helper were put under suspension due to their irresponsible and lethargic attitude at the time of working hours. However, the State Government has paid a compensation for the death of the child for a sum of Rs.1,00,000/- in favour of the petitioner.

5. The learned counsel further submitted that the issue involved in the



present writ petition is covered by the earlier Order passed by this Hon'ble Apex

Court reported in 2020 7 SCC 256 in the case of *Rajendra Singh and others vs.*

National Insurance Company Limited and others Court . The relevant portions of the order are extracted here under:

14. In New India Assurance Co. Ltd. vs. Satender, (2006) 13 SCC 60, the deceased victim of the accident was a nine year old school going child. Considering the claim for loss of future prospects in absence of a regular income, it was observed that the compensation so determined had to be just and proper by a judicious approach and not fixed arbitrarily or whimsically. The uncertainties of a young life were noticed in the following terms: “12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.”

15. The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs.2,95,000/ by



granting any further compensation under the separate head of “future prospects”. It may only be noticed that R.K. Malik (supra) does not consider Satender (supra) on the grant of future prospects as far as children are concerned.

16. Kajal (supra) is distinguishable on its own facts. The victim of the accident was a nine month old child, whose disability certificate reflected that she would grow up to be an adult lying on the bed with all the physical and biological attributes of a woman on attaining adulthood, but her mind would remain of a nine month old child because of the accident. The case is completely distinguishable on its own facts and did not arise out of a death claim, leading to award of compensation towards expenses for frequent treatment, hospitalization, transportation, loss of future earnings, attendant charges, pain, suffering, loss of amenities, loss of marriage prospects and future medical treatment etc.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The facts of the case are not in dispute. Admittedly, the petitioners' child died on 16.10.2019. While playing in the school campus, the steel gate was felt on the child. It is the admitted fact that due to negligence, the incident occurred.

8. Considering the said incident, the State Government have already



paid a sum of Rs.1,00,000/- in favour of the petitioner. The learned Government Advocate relied on the judgment as stated supra will squarely apply to the facts of the present case also.

9. In view of the above settled position of law, this Court directs the first respondent to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the petitioner, apart from the amount which was already paid, within a period of six weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition is disposed of. No cost.

23.03.2023

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To

1. The Secretary to Government,
Home Department,
Secretariat, Chennai-9.

2. The District Collector,
Salem District, Salem.

3. The Additional Director of Panchayat,



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M.DHANDAPANI, J.

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