



C.R.P.No.3493 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3493 of 2023

and

CMP.No.21749 of 2023

Dinesh

.. Petitioner

Vs.

1.G.Parthasarathy

2.The Superintendent,

Egmore Government Child Hospital,
Chennai.

(impleaded as per order in I.A.No.816 of 2000
and amended in I.A.No.871 of 2000)

3.The Chief Medical Officer,

Government Hospital, Kanchipuram.

4.The State of Tamil Nadu,

Represented by Secretary to Government,
Department of Health and Family Welfare,
Fort St.George, Chennai – 600 009.

.. Respondents

(Respondents 3 and 4 were impleaded as per judgment
and decree dated 31.08.2010 in A.S.No.1021 of 2007
and M.P.No.1 of 2008 on the file of Hon'ble
High Court, Madras)



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PRAYER : Civil Revision Petition is filed under article 227 of the constitution of India, to set aside the fair and decreetal order passed in I.A.No.820 of 2012 in O.S.No.230 of 1998, dated 20.03.2013 by the learned Sub Court, Kancheepuram.

For Petitioner : Mr.R.Singaravelan, Senior Counsel for
M/s.M.Srividhya

For Respondents : Mr.K.S.Naveen Balaji for R1

: Mr.B.Tamil Nidhi for R2 to R4
Additional Government Pleader (CS)

ORDER

The Civil Revision Petitioner before me is the plaintiff in O.S.No.230 of 1998. In the year 1994, when he was a baby of 1 ½ years old, a suit had been presented by his mother claiming damages. She had claimed a damage of Rs.5,00,000/- (Rupees five lakhs only) for medical negligence caused by the defendants. A detailed previous history of the case is not necessary at present. Suffice it to record that by Judgment and decree in A.S.No.1021 of 2007, dated 31.08.2010, this Court allowed the appeal and remanded the matter back to the Trial Court for the purpose of impleading the Chief Medical Officer, Government Hospital, Kancheepuram and the State of Tamil Nadu represented by the Secretary



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to Government, Department of Health and Family Welfare, Fort St.George, Chennai – 600 009.

2. When the Civil Revision Petitioner was a child aged about 1 ½ years, he was a victim of harsh medical treatment. On account of the said fact, he had lost his Right Forearm. On account of the wrong treatment, the Right Forearm of the plaintiff has been amputated. Claiming that the damage of Rs.5,00,000/- (Rupees five lakhs only) as claimed by the mother is insufficient, he took out an application in I.A.No.820 of 2012. In the said application, he wanted enhancement of compensation from Rs.5,00,000/- (Rupees five lakhs only) to Rs.15,00,000/- (Rupees fifteen lakhs only).

3. This was resisted before the Trial Court as well as before me, on the ground that the High Court had not permitted the petitioner to file an application for enhancement of compensation in A.S.No.1021 of 2007. Taking note of this submission, the learned Trial Judge dismissed the petition. It is against the said order, the present revision has been filed.

4. Heard Mr.R.Singaravelan representing Ms.M.Srividhya, learned



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Senior Counsel appearing for the petitioner and Mr.K.S.Naveen Balaji, learned counsel appearing for the 1st respondent and Mr.B.Tamil Nidhi, Additional Government Pleader appearing for the respondents 2 to 4.

5. Mr.R.Singaravelan, learned Senior Counsel would submit that the petitioner having suffered damages due to medical treatment and could not quantify the dangers that he suffered while he was a child. He was brought to notice that in O.S.No.230 of 1998, which had been filed by his mother and next friend Shanthi had quantified the amount at Rs.5,00,000/- (Rupees five lakhs only). He would state that on attaining majority, taking into consideration, the disability that the plaintiff is actually facing, though he is entitled to higher compensation, he has restricted to Rs.15,00,000/- (Rupees fifteen lakhs only).

6. Mr.K.S.Naveen Balaji would resist the same and states that the claim amount is barred by time and apart from that he would also assert that the fault is on the Government Hospital and not on his client. Mr.B.Tamil Nidhi would state that the fault is not on the Government but lies elsewhere.



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7. I am not going into the merits of the case at this stage. Whether the fault lies with the 1st defendant or with the defendants 2 to 4 can be gone into only at the time of Trial. I am dealing with the application for amendment towards enhancement of compensation. I would agree with the submission made by Mr.R.Singaravelan that as a child when the suit was filed, the plaintiff would not have been aware as to the suffering that he would have undergone and the damage he would have suffered on account of loss of limb. Only at a later date, on coming to know of that, he has realised that for the damage that he has suffered. On account of loss of the limb, he has felt the compensation should be enhanced and so has sought for enhancement of compensation to Rs.15,00,000/- (Rupees fifteen lakhs only). The mere fact that he has enhanced the compensation of Rs.15,00,000/- (Rupees fifteen lakhs only) does not mean he is automatically entitled to it. It is still up to him to prove the damage that he has suffered due to the loss of the limb. The cause of action for the loss of limb arises everyday and every minute as and when he is unable to use it. Therefore, I am not agreeable with the submission of



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Mr.K.S.Naveen Balaji that the claim of compensation is barred by time.

The amendment would relate back to the date of presentation of the plaint. Therefore, I am not accepting the ground to reject the claim of compensation especially in the claim of medical negligence.

8. The reason given by the learned Trial Judge that the High Court had permitted amendment of the plaint in A.S.No.1021 of 2007 does not apply. This Court had allowed the appeal and remanded the matter to the Trial Judge for a fresh disposal in accordance with law for the purpose of impleading the 3rd and 4th respondent. In the said scenario, the entire suit was before the Court and it was not a case of restricted remand by the High Court. The appellate Court has the power to either restrict the remand or remand it in full. In this case, the remand is full in order to implead the respondents 3 and 4 before me and to proceed with the matter afresh. Therefore, since there is no order of the High Court granting leave to amend does not imply, it is a bar for the petitioner to seek for enhancement of the compensation.

9. In fine, CRP.No.3493 of 2023 is allowed. The order passed by



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the learned Trial Judge in I.A.No.820 of 2012 in O.S.No.230 of 1998, dated 20.03.2013 is set aside. Leave is granted to the petitioner to amend the plaint for enhancement of compensation from Rs.5,00,000/- (Rupees five lakhs only) to Rs.15,00,000/- (Rupees fifteen lakhs only). It is open to the defendants to raise all pleas and the defences stating that they are not responsible for the damage caused to the plaintiff.

10. On amendment, if the learned Trial Judge does not have the pecuniary jurisdiction to deal with the matter, he is directed to send the suit papers to the Court having the jurisdiction to deal with the same. Liberty is granted to the petitioner to seek for exemption of Court fees, as per Order 33 of Code of Civil Procedure.

11. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking Order :Yes/No



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Neutral Citation: Yes/No
MKN2/VEDA

To
The Sub Court,
Kancheepuram.



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V.LAKSHMINARAYANAN,J.

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