



W.P.No.33420 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33420 of 2018

D.Varathan

... Petitioner

Vs.

The Director and Superintendent,
Regional Institute of Ophthalmology
and Government Ophthalmic Hospital,
Egmore,
Chennai – 600 008.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent herein to pay compensation of Rs.10,00,000/- (Ten lakhs) i.e., (Rs.5,00,000/- for Medical Negligence, Rs.3,00,000/- for monetary loss and Rs.2,00,000/- for mental agony).

For Petitioner : Mr.C.Umashankar

For Respondents : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.S.Balamurugan
Government Advocate



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ORDER

This Writ Petition has been filed seeking for a Writ of Mandamus, to direct the respondent herein to pay compensation of Rs.10,00,000/- (Ten lakhs) i.e., (Rs.5,00,000/- for Medical Negligence, Rs.3,00,000/- for monetary loss and Rs.2,00,000/- for mental agony).

2. The case of the petitioner is that he is working as watchman and since he had vision problem, he approached the respondent-Hospital on 12.05.2017 as out patient. After checking up the petitioner, he was informed that cataract operation has to be performed, for which, he was admitted in the respondent-Hospital on 23.05.2017 and cataract operation was conducted on 24.05.2017 and he was discharged on 27.05.2017. Ever since the said operation, the petitioner's vision was going down and he was not able to see inspite of the repeated visits to the hospital. However, on 19.07.2017, operation was done on his left eye. Even, thereafter, the petitioner was not able to see clearly. Therefore, the petitioner obtained second medical opinion from Shankara Eye Hospital and upon examining the petitioner, he was informed that the lens fixed



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during cataract operation was removed. Hence, the petitioner once again approached the respondent-Hospital, but without properly examining and offering medical service to the petitioner, they had forced the petitioner to go away from the hospital and treated him in an inhuman way. Due to the negligence on the part of the respondent-Hospital in performing the surgery, the petitioner's vision was lost, which caused great hardship to the livelihood of the petitioner and therefore, the petitioner has filed the above writ petition before this Court seeking compensation.

3. The learned counsel for the petitioner submits that the petitioner was admitted in the respondent-Hospital on 23.05.2017 and cataract operation was conducted on 24.05.2017 and he was discharged on 27.05.2017. Again, on 19.07.2017, operation was done on his left eye. Even, thereafter, the petitioner was not able to see clearly. However, the petitioner has lost his vision in his left eye, which is a clear case of medical negligence on the part of the respondent hospital, who had failed to treat the petitioner properly. If the respondent hospital had given proper treatment to the petitioner, his vision in his left eye would not have been lost. Hence, he prayed for passing appropriate orders.



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4. The learned Additional Advocate General appearing on behalf of the learned Government Advocate appearing for the respondent submits that, since all the procedures were done to the petitioner with his consent, after explaining the complications, risks involved, there is no negligence on the part of the medical officers and staff of the respondent-Hospital. Hence, without any medical negligence on the part of the doctors/staff, there is no provision to pay compensation to the petitioner.

5. Heard both sides and perused the materials available on record.

6. It is the claim of the petitioner that due to negligence on the part of the respondent-Hospital, the petitioner had lost his left eye vision. Per contra, the learned Additional Advocate General submitted that all the procedures were done only with the consent of the petitioner after explaining the risks involved in it. However, the further contention of the learned Additional Advocate General is that, without any medical negligence on the part of the doctors, who performed the operations, filing the present writ petition seeking for the aforesaid relief is not sustainable.



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7. Though the facts stand as such, in view of the divergent stand, in the interest of justice, this Court, without expressing any opinion on the merits of the case, directs the Tamil Nadu Medical Council to form an expert team to look upon the case of the petitioner and after providing an opportunity of personal hearing to the petitioner as well as the doctors concerned, who performed the operations and after perusing all the documents, if the said expert team arrives at a conclusion that there was negligence on the part of the doctors concerned, then the respondent-Hospital be directed to pay fair compensation to the petitioner. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. With the above directions, the Writ Petition is disposed of. No costs.

28.03.2023

Index: Yes/ No
Speaking Order/ Non-Speaking Order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.,

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To

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and Government Ophthalmic Hospital,
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