



W.P.(MD)No.14677 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.14677 of 2021

J.Ramesh

... Petitioner

vs.

1.State of Tamil Nadu,
represented by the Principal Secretary,
Department of Rural Development and Panchayat Raj,
State of Tamil Nadu, Fort St. George, Chennai - 600 009.

2.State of Tamil Nadu,
represented by the Principal Secretary,
Department of Health and Family Welfare,
State of Tamil Nadu, Fort St. George, Chennai 600 009.

3.State of Tamil Nadu,
represented by the Principal Secretary,
The Public Works Department,
State of Tamil Nadu, Fort St. George, Chennai 600 009.

4.The Director,
Directorate of Medical and Rural Health Services,
DMS Complex, 361, Anna Salai,
Chennai - 600 009.

5.The Director,
Directorate of Rural Development and Panchayat Raj Department,
Panagal Building, Chennai – 600 015.



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6.The Joint Director,
Medical and Rural Health Services,
District Family Welfare Bureau,
Multipurpose Health Worker Training Centre Madurai.

7.The District Collector,
District Collectorate, Madurai District, Madurai.

8.The Block Developmental Officer,
Office of the Block Developmental Officer,
Thiruparankundram, Madurai 625 006.

9.The Superintendent of Police,
Office of the Superintendent of Police, Madurai 625 007.

10.The Inspector of Police,
Nagamalai Pudukkottai Police Station,
Nagamalai Pudukkottai, Madurai - 625 019. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to conduct enquiry and take action against the officials, who are all responsible for the death of the petitioner's daughter by name 'Jaanu Sri' aged about 1¾ years and to provide the petitioner fair and reasonable compensation for the death of petitioner's daughter by name 'Jaanu Sri' in an expedite manner in accordance with law within the time stipulated by this Court.

For Petitioner	:Mr.R.Alagumani
For R1 to R8	:Mr.K.S.Selvaganesan
	Additional Government Pleader
For R9 and R10	:Mr.R.Sivakumar
	Government Advocate (Crl.side)



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ORDER

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This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to conduct an enquiry and to take action against the erring officials, who were responsible for the demise of the petitioner's daughter aged about 1 $\frac{3}{4}$ years and to provide reasonable compensation to the petitioner.

2. When the matter came up for hearing on 18.08.2021, this Court passed the following order:

“The petitioner seeks an inquiry into the death of his daughter and for the payment of reasonable compensation in respect thereof.

2.The petitioner has stated that his daughter, who was little more than 1 $\frac{1}{2}$ years, at the relevant point of time, died by falling into an open 'Septic Tank' in the 'Sub Health Centre' at Keelakuyilkudi.

3.Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of the respondents 1 to 7 and 9 & 10 and Mr.Shanmuga Sundharam, learned Standing Counsel accepts notice on behalf of the 8th respondent.

4.The state is directed to file a detailed report setting out the action taken pursuant to the death of the petitioner's daughter and also indicating the schemes available for payment of compensation in such regard. Such report shall be filed within a period of two weeks from the date of receipt of a copy of this order.

5.Let the matter appear on 01.09.2021.”



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3. The case was thereafter listed for hearing on 06.11.2023 and this

Court passed the following order:

“This Writ Petition has been filed for a direction to the respondents to pay compensation to the petitioner for the death of his daughter aged about 1¾ years by falling into an open septic tank at Sub Health Centre, Keelakuyilkudi.

2. When matter was taken up for hearing, the learned Additional Government Pleader appearing for the respondents submitted that a proposal has already been placed before the Principal Secretary for payment of compensation to the petitioner from the Chief Minister's Relief Fund.

3. In view of the above development, this Court wants to await the decision of the Principal Secretary fixing the compensation amount payable to the petitioner. Depending upon the same, further orders will be passed in this Writ Petition.

4. List this Writ Petition under the caption 'for orders' on 27.11.2023.”

4. The case was once again listed for hearing on 27.11.2023 and

this Court passed the following order:

“Pursuant to the earlier order passed by this Court on 06.11.2023, the matter was posted for hearing today.

2. The learned Additional Government Pleader produced a Government Order passed in G.O. (1D) No.832 dated 23.11.2023, wherein the Government has decided to pay a sum of Rs.3 lakhs to the mother of the deceased from the Chief Minister's Relief Fund.

3. A cheque drawn in the name of the mother of the deceased dated 24.11.2023 for a sum of Rs.3 lakhs was handed over to the learned counsel for the petitioner.

4. The learned counsel for the petitioner submitted that this is a clear case of negligence and hence, compensation amount must be quantified and paid.

5. The above issue raised by the learned counsel for the petitioner will be gone into during the next date of hearing.

6. Post this Writ Petition on 11.12.2023 under the same caption.”



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5. Heard Mr.R.Alagumani, learned Counsel appearing on behalf of the petitioner, Mr.K.S.Selvaganesan, learned Additional Government Pleader appearing on behalf of the respondents 1 to 8 and Mr.R.Sivakumar, learned Government Advocate (Crl. Side) appearing on behalf of the respondents 9 and 10.

6. The petitioner is the father of the deceased, Jaanu Sri, who was aged about 1³/₄ years at the relevant point of time. The petitioner was having three daughters and the said Jaanu Sri is the third daughter of the petitioner. The petitioner was residing opposite to Keelakuyilkudi Panchayat Office and Sub Health Centre. On the sanction accorded by the District Collector, a Sub Health Centre was constructed in the year 2019. The work was completed during May 2020. However, since there was a complete lock down due to pandemic, the building was handed over to the Block Medical Officer, Valayankulam only during the year 2021. The drainage pit was located on the back side of the Sub Health Centre and it was closed with two blocks of removable kadappa stones. There is no dispute with regard to the fact that the building was not secured by constructing a compound wall around the building.



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7. On 07.07.2021, the child was left in the custody of two other children and those children were playing near the garden. When the mother of the child returned back and asked those children as to where is deceased Jaanu Sri, they found that the child was missing and after search, they came to know that the child had fallen into the drainage soak pit and the child was removed from the pit and was taken to the Primary Health Centre and unfortunately, the child died. The postmortem that was conducted on the child revealed the fact that the child had died of asphyxia due to drowning. It is, under these circumstances, the petitioner had approached this Court and sought for taking action against the erring officials and for payment of compensation on the ground of negligence on the part of the respondents.

8. The ninth respondent has filed a counter affidavit and has taken a stand that the construction of the Sub Health Centre was completed in the year 2020 and it was handed over to the Block Medical Officer in the year 2021. As part of construction, the drainage pit/septic tank was located on the back side of the Sub Health Centre and it was closed with two kadappa stones. Since compound wall was not put up, some



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miscreants had removed the stones and as a result, the drainage pit/septic tank was kept open and unfortunately, a child had fallen into it and had succumbed. According to the ninth respondent, this incident was more in the nature of an accident for which, the respondents cannot be blamed and that there was no negligence on the part of the respondents. That apart, the investigation done by the police based on the FIR that was registered in Cr.No.296 of 2021, also resulted in a closure report as mistake of fact. Hence, the respondents have sought for dismissal of this Writ Petition.

9. During the pendency of this Writ Petition, the Government had sanctioned and paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the mother of the deceased and this amount was released as *exgratia* payment from the Chief Minister's Relief Fund. This fact had already been noted in the earlier order passed on 27.11.2023.

10. The main issue that arises for consideration, is as to whether there was negligence on the part of the respondents in not properly securing the drainage pit/septic tank, which resulted in the death of a



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child aged about 1 $\frac{3}{4}$ years and if so, what is the quantum of compensation that has to be paid to the petitioner.

11. There is no dispute with regard to the fact that the petitioner was residing opposite to the Sub Health Centre. It is also not in dispute that pursuant to the sanction granted by the District Collector, the construction of the Sub Health Centre was commenced in the year 2019 and it was completed during May 2020. The building was not able to be handed over to the Block Medical Officer due to pandemic and ultimately, it was handed over only during the year 2021. The averments made in the affidavit filed in support of the Writ Petition and also the averments made in the counter affidavit show that there was a drainage pit/septic tank on the back side of the Sub Health Centre and it was only closed with two blocks of removable kadappa stones. Unfortunately, the building was not enclosed with a compound wall and as a result, there was free access to everyone to get into the building.

12. The manner in which the incident has been projected shows that the kadappa stones that were covering the drainage pit, were moved



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and as a result, the drainage was exposed and the child had fallen into the drainage pit. It is the duty of the authorities to fence the Sub Health Centre with a compound wall in order to ensure safety and security. The same is quite clear from the Indian Public Health Standards' Guidelines that have been issued to such Sub Health Centres. The counter affidavit shows that compound wall was not put up by the contractor, since in the estimate that was given, there was no provision for putting up a compound wall and as a result, no one cared to fence the building with a compound wall and there was free access for everyone to get near the building. Obviously, somebody had removed the kadappa stones which led to a disaster. For the negligence on the part of the respondents in not properly fencing/protecting the building by putting up a compound wall, the respondents are necessarily answerable for the same. It is not necessary to analyse as to who had removed the kadappa stones, since it is not relevant for this case. Somebody had moved the kadappa stones and thereby, the child had fallen into the drainage pit. Since the Sub Health Centre was not properly secured/protected by fencing it with a compound wall, the negligence has to be necessarily attributed against the respondents. In view of the same, this Court holds that there is



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negligence on the part of the respondents in not fencing the building with a compound wall as stipulated under the guidelines.

13. The next issue to be gone into is as to the compensation that is payable to the petitioner. As stated supra, already a sum of Rs.3,00,000/- (Rupees Three Lakhs only) has been paid as *exgratia* payment from the Chief Minister's Relief Fund to the petitioner. The learned Counsel for the petitioner by submitting a memo of calculation, dated 11.12.2023 contended that the respondents are liable to pay a compensation of a sum of Rs.6,52,500/- (Rupees Six Lakhs Fifty Two Thousand and Five Hundred only) with interest at 7.5% p.a. For this purpose, the petitioner has calculated the compensation in the following manner:

MEMO OF CALCULATION		
Date of Death	:	07/07/2021
Age	:	1 ¾ years
Notional Income	:	30000/- per year
Future prospects (25% of notional income)	:	(+) <u>7,500/-</u> <u>37,500</u>
37,500x15 (multiplier)	:	5,62,500/-
Consortium	:	50,000/-
Funeral	:	20,000/-
Estate	:	20,000/-
Total	:	6,52,500/-



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14. To substantiate the above, the learned Counsel for the petitioner also relied upon the judgment of Division Bench of Delhi High Court in ***Court on its Own Motion vs Govt. of NCT of Delhi and others***, reported in ***2018 SCC OnLine Del 10283***. The learned Counsel for the petitioner also relied upon the judgment of the Hon'ble Apex Court in ***Meena Devi vs Nunu Chand Mahto @ Nemchand Mahto and others (SLP (Civil)No.5345 of 2019)*** dated 13.10.2023.

15. The learned Additional Government Pleader appearing on behalf of the respondents submitted that compensation cannot be fixed based on the above judgments, since in the first judgment, the age of the child was above 11 years and in the second judgment, the age of the child was nearly 12 years. Whereas, in the instant case, the age of the child was 1 $\frac{3}{4}$ years.

16. The fixation of compensation in most of these cases is only based on approximation and there cannot be a standard formula for fixing the compensation. At the best, this Court while exercising its jurisdiction



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under Article 226 of Constitution of India, can only take cue from the principles of fixing compensation under the Motor Vehicles Act. This is more so due to the fact that there is no legislation which enables this Court to fairly quantify the adequate compensation that has to be paid to a mother/father, who have lost their child at a very young age. Hence, this Court can only draw inspiration from the judgments that have been cited before this Court and also the general principles that are normally applied while fixing compensation under the Motor Vehicles Act.

17. In cases involving the death of children, the Hon'ble Apex Court had on various occasions dealt with such cases and has come to the conclusion that even in the cases of death of school going children, the compensation for the lost of future prospects can be granted. Useful reference can be made to the judgment in ***R.K.Malik vs. Kiran Pal*** reported in **(2009) 14 SCC 1**. Insofar as the fixation of the multiplier is concerned, the Larger Bench of the Hon'ble Apex Court in ***Reshma Kumari and others and Madan Mohan and another*** reported in **2013 (2) CTC 680**, by following the dictum in Sarala Varma's case, has concluded that 15 years multiplier can be adopted, where the age of the



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deceased is less than 15 years.

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18. In the judgments that were relied upon by the learned Counsel for the petitioner, the children were aged about 11/12 years and they were school going children. In one case, the child had fallen into a water harvesting pit in a park, which was maintained by the PWD. In the other case, the child was dashed by a jeep and as a result, he died. The accident had taken place due to various reasons and what is important is to see as to how the Court had assessed the compensation and directed the payment of compensation by the tortfeasor.

19. In the first case decided by the Division Bench of Delhi High Court, the Division Bench took into account the standard compensation by taking cue from the judgment in *Kamla Devi vs NCT of Delhi* reported in *114 (2004) DLT 57*. The Court took into consideration the Consumer Price Index Factor and calculated the compensation. That apart, the Court also determined the pecuniary losses, which were added to the total compensation. The Court applied 15 multiplier.



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20. In the second case, the Hon'ble Apex Court had also applied 15 multiplier in view of *Sarla Varma and others vs Delhi Transport Corporation and another* case reported in (2009) 6 SCC 121 and determined the compensation. The Apex Court held that in cases of child death, normally, the income of Rs.15,000/- (Rupees Fifteen Thousand only) is taken into consideration and it is enhanced on account of devaluation of money and value of rupee coming down. Hence, it is increased from time to time. It was taken to be Rs.25,000/- (Rupees Twenty Five Thousand) to Rs.30,000/- (Rupees Thirty Thousand) during the year 2022. Accordingly, the compensation was determined. In the case that was dealt with by the Hon'ble Apex Court, the age of the child was nearly 12 years.

21. In the instant case, the age of the child was 1 $\frac{3}{4}$ years. In the judgment that was dealt with by the Hon'ble Apex Court in *Kurvan Ansari @ Kurvan Ali and another vs Shyam Kishore Murmu and another* reported in (2022) 1 SCC 317, the age of the child was nearly 7 years and the Hon'ble Apex Court took Rs.25,000/- (Rupees Twenty Five Thousand) as notional income. Taking cue from this judgment, this Court



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is inclined to fix the notional income at Rs.20,000/- (Rupees Twenty Thousand) for the child aged about 1 $\frac{3}{4}$ years. Applying the multiplier of 15, the loss of dependency can be arrived at Rs.3,00,000/- (Rupees Three Lakhs) (15x20,000). By adding conventional heads, such as consortium, funeral expenses, loss of love and affection and mental agony, this Court is inclined to fix a net compensation of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand). Thus, the total compensation in this case can be fixed as Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousands). This can be directed to be paid along with interest at the rate of 7.5% p.a.

22. The respondents have already paid a sum of Rs.3,00,000/- (Rupees Three Lakhs) towards *exgratia* payment and this amount has to be deducted from the total compensation. However, the interest portion is payable towards this amount also. Hence, the interest at the rate of 7.5% p.a., has to be paid on Rs.3,00,000/- (Rupees Three Lakhs) from 01.08.2021 to 24.11.2023. For the balance amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand), the interest has to be paid at the rate of 7.5% p.a., from 01.08.2021 till the date of actual payment to the petitioner. The entire compensation along with interest shall be paid to



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the petitioner within a period of six weeks from the date of receipt of a copy of this order.

23. Insofar as the action against the erring officials, the learned Additional Government Pleader submitted that already disciplinary proceedings were initiated and show cause notices have been issued to the erring officials and explanation has also been sought for. In view of the same, the disciplinary proceedings shall also be concluded within a period of three months from the date of receipt of a copy of this order.

24. In the result, this Writ Petition is allowed with the above directions. No costs.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

11.12.2023

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To

1. The Principal Secretary,
Department of Rural Development and Panchayat Raj,
State of Tamil Nadu, Fort St. George, Chennai - 600 009.

2. The Principal Secretary,
Department of Health and Family Welfare,
State of Tamil Nadu, Fort St. George, Chennai 600 009.

3. The Principal Secretary,
The Public Works Department,
State of Tamil Nadu, Fort St. George, Chennai 600 009.

4. The Director,
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10. The Inspector of Police,
Nagamalai Pudukkottai Police Station,
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N.ANAND VENKATESH, J.

cmr

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