BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7310 of 2014
and
M.P(MD)No.1 of 2014

Subramaniyam ... Petitioner

Vs

1.The Secretary to Government,
Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St.George,
Chennai.

2.The Director of Medical and
Rural Health Services,
Office of the Director of Medical and
Rural Health Services,
Kilpauk,
Chennai.

3.The Joint Director,
Medical Rural and Health Development
Services Department,
Krishnan Kovil,
Nagercoil,
Kanyakumari District.

4.The District Collector,
Office of the District Collector,
Kanyakumari District.

5.The Dean,
Asaripallam Government Medical College Hospital,
Nagercoil,
Kanyakumari District.

6.The Chief Medical Officer,
Kuzhithurai Government Taluk Hospital,
Kuzhithurai,
Vilavankodu Taluk,
Kanyakumari District.

7.The Christian Medical College,
Velore,
Velore District.

8.The Superintendent of Police,
Office of the Superintendent of Police,
Kanyakumari District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to pay fair and reasonable amount of compensation to the Petitioner's wife, namely, Sita Lakshmi wife of Subramaniyam aged about 31 years, now taking treatment in Coma condition at Asaripallam Medical College Government Hospital, Kanyakumari District, for her pain, suffering and her present Coma condition, consequently to direct the respondents 1 and 2 to initiate appropriate action including departmental proceedings against the Kuzhithurai Government Taluk Hospital authorities, who are responsible for the present Coma condition of her wife.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.RA.Ramachandhran
Additional Government Pleader
for R.1 to R.6 & R.8

ORDER

Heard the learned counsel on either side.

2. The petitioner's wife Seetha Lakshmi had developed a swelling on the right side of her neck. She got admitted in Kuzhithurai Government Taluk Hospital as the doctors had advised surgery on the thyroid gland. The surgery was conducted on 03.03.2014. After the surgery was performed, the petitioner's wife fell into Coma. She was thereafter shifted to Thiruvananthapuram Government Medical College Hospital on 05.03.2014. She was given treatment in the said institution till 17.04.2014. The petitioner had incurred more than Rs.3 Lakhs. Since the petitioner could not afford the cost on medical treatment, she was shifted to Asaripallam Government Medical College Hospital. Since she was not showing any sign of recovery, the present writ petition came to be filed on 23.04.2014. Based on the oral direction of this Court, the petitioner's wife was shifted to Government Rajiv Gandhi General Hospital, Chennai. Though proper treatment was given to her for about seven months, she did not recover and she eventually passed away.

3. The stand of the petitioner is that his wife died only on account of medical negligence on the part of the doctors who performed the surgery at the sixth respondent hospital. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. In particular, he emphasized that even a ventilator support was not available. That was why, the petitioner's wife did not regain her consciousness after administering anesthesia. A calculation memo was filed and he called upon this Court to grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents.

5. Dr.S.Prinith Siga Fells appeared in person and explained what actually happened on the fateful day. According to the respondents, there was no medical negligence on their part and what happened was beyond their control. It is further stated that a sum of Rs.5 Lakhs was already paid to the petitioner as ex-gratia from the Hon'ble Chief Minister's Public Relief fund. The respondents pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. The question that calls for consideration is whether the petitioner's wife died on account of medical negligence. The concept of medical negligence will have to be applied appropriately to the facts and circumstances of each case. If the doctor concerned has adopted the standard procedure that has been laid down in the protocol and had given treatment as any medical professional in his place would do, then the Court will not be justified in fastening liability on the doctor for any consequence that may ensue.

8. I called upon the learned Additional Government Pleader to clarify on two aspects:

a) Whether proper infrastructural facilities were available in Kuzhithurai Government Taluk Hospital and

b) Whether in the said hospital, such surgeries are usually performed.

The answer was in the affirmative. Dr.S.Prinith Siga Fells drew my attention to a text book, namely, Baily and Love's Short Practice of Surgery. The following is extract from the said textbook:

> "Laryngospasm is a problematic reflex which occurs often under general anaesthesia. It is a primitive protective airway reflex that exists to protect against aspiration but can occur in light planes of anaesthesia.
>
> ...The incidence of laryngospasm has been reported in the literature as high as 25% in patients undergoing tonsillectomy and adenoidectomy.
>
> Laryngospasm can rapidly result in hypoxaemia and bradycardia."

Dr.S.Prinith Siga Fells had assisted the main doctor and he submitted that what happened to the petitioner's wife is what is known in medical terminology as "Laryngospasm". He also stated that surgery was successfully conducted and that she was wheeled out from operation theatre in a good condition. The laryngospasm developed some 15 minutes later.

9. In this regard, my attention also drawn by the learned Additional Government Pleader to the enquiry report. The enquiry committee comprised Dr.S.R.Raja Kumar, Head of the Department, Department of General Surgery, Kanyakumari Government Medical College Hospital, Asaripallam and Dr.A.Vasukinathan, Head of the Department, Department of Anaesthesiology,

Kanyakumari Government Medical College Hospital, Asaripallam. After conducting enquiry, the following findings were arrived at:

> "1. Profound Hypoxic episode in the immediate post-operative period is the cause for the condition, Hypoxic Ischaemic Encephalopathy.
> 2. The complication was immediately identified and effectively managed by the doctors."

No material has been placed before me to dislodge the aforesaid findings.

10. The learned counsel appearing for the petitioner strongly submitted that if ventilator support had been available, the occurrence could have been avoided. Dr.S.Prinith Siga Fells strongly refuted the said allegation. While conceding that the extra ventilator required for transporting the petitioner to Thituvananthapuram was not available, he pointed out that the anesthetic machine itself can function as a ventilator and therefore it is incorrect to contend that for want of infrastructure facilities, the petitioner's wife fell into comatose condition.

11.Dr.S.Prinith Siga Fells felt that for the unfortunate occurrence, the doctors cannot be blamed and it was not within their foresight. In such matters,

the writ Court should not readily jump into any conclusion adverse to the doctors. The materials placed before me by the respondents including the enquiry report, lead me to the conclusion that the doctors who performed the surgery for the petitioner's wife at the sixth respondent hospital cannot be blamed.

12. The next question that arises for consideration is whether the petitioner had been adequately compensated. Even according to the respondents, the petitioner had spent more than Rs.3,75,000/- at Tiruvananthapuram Hospital itself. She was in Rajiv Gandhi General Hospital, Chennai for more than seven months. Obviously, she could not have been left alone. The petitioner would have been with her throughout. The petitioner had been eking out his living as an auto driver. For about seven long months, he would have been deprived of his income. On the other hand, he would also have incurred substantial sum to take care of himself and for his stay and all other incidental expenses. The children would have been at Kanyakumari. The petitioner would have often travelled to and fro. The ex-gratia of Rs.5.00 lakhs given to the petitioner would have hardly covered the expenses already incurred by him.

13. The learned counsel appearing for the petitioner drew my attention to the order dated 01.02.2021 passed by me in W.P(MD)No.2721 of 2017 (Tamilselvi Vs The State of Tamil Nadu & Others). I had held as follows:

> "8.... When a patient is admitted in a government hospital for treatment and he/she suffers any injury or death which is not anticipated to occur in the normal course of events, even in the absence of medical negligence, the government is obliged to disburse exgratia to the affected party. In the case on hand, liability has to be fastened on the government. Since the institution happens to be the Government institution, the Government of Tamil Nadu will have to necessarily take consequence. My attention is drawn to G.O(Ms)No.395 dated 04.09.2018 whereby a corpus fund has been created by the Tamil Nadu Government. It appears that every Government doctor contributes certain sum of money towards this corpus fund and whenever compensation is directed to be paid by the courts, amount will be drawn from this fund and paid. ..."

The same principle shall be applied to the present case also. I direct the first respondent to pay a further sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner by way of ex-gratia.

14. This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.07.2023

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

To

1.The Principal Secretary, Secretary to Government,
Health and Family Welfare Department, Government of Tamil Nadu,
Fort St.George, Chennai.

2.The Director of Medical andRural Health Services,
Office of the Director of Medical and Rural Health Services,
Kilpauk, Chennai.

3.The Joint Director, Medical Rural and Health Development
Services Department, Krishnan Kovil, Nagercoil,
Kanyakumari District.

4.The District Collector, Kanyakumari District.

5.The Dean, Asaripallam Government Medical College Hospital,
Nagercoil, Kanyakumari District.

6.The Chief Medical Officer,
Kuzhithurai Government Taluk Hospital,
Kuzhithurai, Vilavankodu Taluk, Kanyakumari District.

7.The Superintendent of Police, Kanyakumari District.

G.R.SWAMINATHAN, J.

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