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W.P.No.18133 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.18133 of 2024

Tmt.Rajeshwari

... Petitioner

Vs

1. The Government of Tamil Nadu
Rep. By its Secretary to Ministry of Local Administration
Chepauk, Chennai
 2. The Tirupur City Municipal Corporation
Rep. By its Commissioner
Kamaraj Road, Tirupur-1
 3. Tamil Nadu Water Supply and Drainage Board
Rep. By its Executive Engineer
Tirupur-1
 - 4.M/s.Koyal Koya & Company Construction
Rep. By its Managing Director
72, MIGH, Mehdipatnam, Hyderabad-28
- ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents herein to jointly and severally pay a compensation of Rs.25,00,000/- along with subsequent interest @ 9% p.a thereon as the compensation for the death of the petitioner's husband attributed to the negligence on all the respondents.



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For Petitioner : Mr.Gunasri M.P

For Respondents : Dr.T.Seenivasan
Special Government Pleader for R1

Mr.D.R.Arun Kumar
Standing Counsel for R2

Ms.Y.Kavitha
Standing Counsel for R3

Mr.B.Saravanan
Senior counsel
for M/s.B.Saravanan Associates for R4

ORDER

The writ petition has been filed for a direction to the respondents herein to pay a sum of Rs.25,00,000/- as compensation together with interest for the death of the petitioner's husband attributing negligence on all the respondents.

2. It is the case of the petitioner that the petitioner's husband who was aged about 74 years was an Auditor and they have two daughters. While being so, the fourth respondent, who is the Contractor of second respondent Corporation, was carrying out the excavation work to lay the 4th water scheme pipeline in the locality of Muthanampalayam area, Tiruppur



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District. During the course of said work, fourth respondent left out the excavation and concrete work with big iron rods in the Kovilvazhi Muthanampalayam Road, Tiruppur without warning signs or a board indicating the existence of a dangerous pit. There was no light exposing the pit nor the pit was illuminated to indicate its depth. When things stood as above, on 17.12.2022 at about 08.30 pm, when the petitioner's husband was returning to his home from his office in a two wheeler bearing Registration No.TN 42 K 9875, he fell down into the pit and got severely injured. It is further stated that the petitioner and her daughter on being informed about the accident, went to the spot and the petitioner's husband was immediately taken to the Government Hospital, Tiruppur, where the petitioner was informed that the petitioner's husband succumbed to the injuries. On the complaint lodged by the petitioner, an FIR in Cr.No.756 of 2022 was registered for offences under Sections 279 and 304(A) of IPC and the investigation is still pending.

3. The fourth respondent is a Contractor and the work was awarded to the fourth respondent by the second respondent. Therefore, the petitioner submitted a representation seeking compensation to the tune of Rs.15,00,000/- with accrued interest but the same was not considered by the



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respondents 2 and 4.

4. The learned Senior Advocate appearing for the 4th respondent advertg to the counter affidavit submitted that the writ petition itself is not maintainable since it involves a question of fact and the negligence on the part of the fourth respondent has to be proved before the Court by let in evidence. Further, the quantum of compensation cannot be arrived at by this Court and it can be decided only by let in evidence. Therefore, the writ petitioner without approaching the civil Court, has invoked the jurisdiction of the writ court under Article 226 of Constitution of India and therefore, the writ petition is not maintainable. It is further stated by the learned Senior Advocate that the investigation is still pending in Cr.No.756 of 2022 and therefore, the liability cannot be fastened on the fourth respondent. It is his further submission that the deceased was aged about 74 years and there is no document to show his yearly income. When there are two daughters, who are the legal heirs of deceased, the writ petition has been filed by the wife of the deceased alone and therefore, the writ petition is not maintainable for non-joinder of necessary parties.

5. The learned Standing counsel for the second respondent submitted that in order to execute the work, the fourth respondent was



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awarded the contract and also an agreement was executed between the second and fourth respondents. As per the clause 17.1 of the agreement the contract the Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of the bodily injury, sickness, disease or death of any person whatsoever arising out of or in the course of or by reason of the contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.

6. It is also useful to refer to clause 18.3 of the contract agreement, which reads as follows:

'18.3 Insurance against Injury to Persons and Damage to Property

The insuring party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under sub-clause 18.2 (Insurance for Works and Contractor's Equipment) or to any person (except person insured under Sub-Clause 18.4 (Insurance for Contractor's Personnel), which may arise out of the



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Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This Insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data with no limit on the number of occurrence. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurance specified in this sub-clause:

(a) shall be effected and maintained by the Contractor as insuring Party,

(b) shall be in the joint names of the Parties,

(c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under sub-clause 18.2) arising out of the Contractor's performance of the Contract, and

(d) may however exclude liability to the extent that it arises from:

(i) the Employer's right to have the Permanent Works executed on, over, under or through any land and to occupy this land for the Permanent Works.

(ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and

(iii) a cause listed in sub-clause 17.3 (Employer's Risks), except to the extent that cover is available at commercially reasonable terms.'

7. Admittedly, the occurrence was happened during the night



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hours, that is at 08.30 p.m. on 17.12.2022 when the deceased was proceeding to his house from his office. The deceased fell down in the pit excavated by the fourth respondent during the execution of 4th water scheme pipeline work at Muthanampalayam area, Tiruppur. Further, there was no warning sign or sign board indicating the existence of a dangerous pit. There was no light exposing the pit nor the pit was illuminated to indicate its depth. Unfortunately, the petitioner's husband fell down in the pit along with this two wheeler and he sustained grievous injuries and succumbed to the same.

8. In view of the above facts and circumstances of the case, two points arise for consideration. They are i) whether the writ petition is maintainable when the question of fact involved for granting compensation and ii) if the writ petition is maintainable, what is the quantum of compensation to be awarded.

9. The rule of “*res ipsa loquitur*” will apply to this case as the admitted facts and the circumstances leading to accident leave no manner of doubt, that it was negligence on the part of the fourth respondent which resulted in the accident. Therefore, there are no disputed questions of facts which are required to be determined under Article 226 of Constitution of



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India. Normally, the rule is, the petitioner has to prove negligence and not the fourth respondent to disprove but there is an exception to this rule which applies where the circumstances surrounding the thing which causes the damage are at the material time exclusively under the control of the fourth respondent or his servant and the happening is such that it does not occur in the ordinary course of things without negligence on the part of the fourth respondent. Further, a case has been registered against the fourth respondent in Cr.No.756 of 2022 on the file of Nallur Police Station, Tiruppur for the offences under Sections 279 and 304(A) of IPC and it is pending investigation.

10. On perusal of the materials placed before this Court, this Court is of the *prima facie* view that the negligence is on the part of the fourth respondent, which resulted in the accident. Therefore, the writ petition is very much maintainable under Article 226 of the Constitution of India.

11. The next question is what is the compensation that can be awarded. The petitioner's husband was aged about 74 years. Though it is stated in the petition that the petitioner's husband was an auditor in Samy Associates at Tirupur, but the petitioner failed to produce any evidence to



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substantiate the same. Therefore, this Court is of the view that the monthly income of the petitioner's husband can be fixed at Rs.30,000/-. Though the petitioner has two daughters, they are already got married and living separately with their spouse and hence, the petitioner is the only dependant of the deceased. In the facts of this case, 1/4 can be deducted towards personal expenses of the deceased and considering the age of the deceased, multiplier '5' can be applied. Therefore, the compensation that can be awarded under the head loss of income would be Rs.13,50,000/- $[(30000 - 1/4) \times 12 \times 5]$. The petitioner is also entitled for compensation under the head loss of love and affection and accordingly, a sum of Rs.1,00,000/- is fixed under the head loss of love and affection and a sum of Rs.50,000/- is fixed towards funeral and other miscellaneous expenses. Totally the petitioner is entitled for compensation of Rs.15,00,000/-.

12. Accordingly, this writ petition is allowed and the fourth respondent is directed to pay a compensation of Rs.15,00,000/- with interest at the rate of 6% per annum from the date of accident i.e., 17.12.2022 till realisation. It is made clear that this amount of Rs.15,00,000/- is full and final compensation and the petitioner cannot claim any other compensation



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before any other forum. Further, any of the observations made by this Court will not influence the criminal case. No costs.

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Index:Yes/No
Neutral Citation/Yes/No
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