



W.P.No.34311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34311 of 2023

Rihana

...Petitioner

Vs.

1. The Secretary to Government,
Health Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
 2. The Director of Health Services,
Department of Rural Welfare,
DMS Office Campus,
Anna Salai, Teynampet, Chennai-600 006.
 3. The Joint Director of Medical Services,
DMS Office Campus,
Anna Salai, Teynampet, Chennai-600 006.
 4. The Dean,
Arcot Government Hospital,
Arcot, Ranipet District-632 503.
- ...Respondents

Writ Petition filed under Article 226 of Constitution of India, praying
for issuance of Writ of Mandamus, direct the 4th respondent herein to pay a



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appropriate compensation for medical negligence in performing the family planning operation prescribed by this Hon'ble Court pursuant to the representation dated 14.11.2023 within a stipulated period of time.

For Petitioner : Mr.R.Sunilkumar

For Respondents : Mr.E.Sundaram, GA

ORDER

The petitioner has filed this Writ petition seeking direction to the 4th respondent to pay a appropriate compensation for medical negligence in performing the family planning operation, by considering the petitioner's representation dated 14.11.2023.

2. The case of the petitioner is that, she got married with one Yassen in the year 2012 and out of the wedlock, they were blessed with two girl children and one male child. Thereafter, the petitioner underwent Puerperal Sterilization by Tubectomy on 25.09.2018 at the 4th respondent Hospital. While so, to the shock and surprise of the petitioner, at the end of 2021, the petitioner got conceived again, which was solely due to the failure of the operation conducted by the 4th respondent, as a result, on 03.06.2022, the



petitioner gave birth to a female child. Thereafter, on 10.06.2022, once again the petitioner undergone another surgery by same methodology.

Unfortunately, the petitioner's husband died on 19.09.2023 due to heart attack and now as a single parent, the petitioner is not in a position to meet out the expenses of her children and she is put to various hardships, due to the lapses committed on the part of the 4th respondent. Therefore, the respondents are jointly liable to pay compensation to the petitioner. The petitioner made a representation dated 14.11.2023 before the respondents seeking to pay appropriate compensation for medical negligence committed on the part of the doctor attached to the 4th respondent Hospital. However, till date, no orders have been passed on the said representation. Hence, this writ petition.

3. Learned counsel for the petitioner submitted that, the issue involved in this Writ petition is no longer *res integra*, and there are several decisions rendered by the Constitutional Courts including the Hon'ble Apex Court on this issue. Learned counsel for the petitioner placed reliance on the decision of this Court passed in ***W.P.No.22349 of 2018 dated 25.01.2022*** in the case of



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Dhanam Vs. Secretary to Government, wherein this Court by relying upon the decision of the Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Smt.Santra*** reported in ***2000 (3) Supreme 520*** held that *the petitioner is entitled to the compensation appropriately in respect of her third child, who miserably became her 'unwanted child' and Medical negligence plays its game in strange ways. Sometimes it plays in life; sometimes it gifts an 'unwanted child' as in the instant case where a poor labourer woman, who already had many children and had opted for sterilization, developed pregnancy and ultimately gave birth to a female child inspite of sterilization operation which, obviously, had failed.* The said decision was also relied upon by this Court in ***W.P.(MD).No.4505 of 2016 dated 28.04.2023***, and ultimately it was held that, the petitioner therein is entitled for a compensation of Rs.3,00,000/- for the negligence which is attributable solely on the part of the Doctor attached to the 4th respondent and directed the respondents to provide free education to the third child of the petitioner and further ordered for payment of Rs.1,20,000/- per year to meet the child's need for food and proper up-bringing. Therefore, the learned counsel submitted that the above said decisions being squarely applicable to



this case, this Court may issue appropriate directions for payment of compensation in favour of the petitioner.

4. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that, the petitioner has given consent before the surgery that, she will not make any claim in case the family planning operation failed or there is any complication in future due to such surgery. Having given such a declaration, it is not open to the petitioner to file the present writ petition seeking compensation. Further, the Doctor attached to the 4th respondent hospital was well trained and a renowned surgeon. Learned counsel further submitted that, immediately after the petitioner became pregnant, inspite of the family planning operation, she approached the 4th respondent hospital for treatment and at that time, the Doctor attached to the 4th respondent hospital advised her to abort the fetus which was nine weeks four days by then. However, the petitioner refused to terminate the fetus. Therefore, there is no lapses on the part of the Doctor who performed the surgery and the fact that the petitioner became pregnant even after the surgery cannot be said to be due to the lapses in the surgery performed on her and



family planning operations are not 100% effective and due to spontaneous recanalization, the petitioner became pregnant, for which, the 4th respondent cannot be made liable. In this regard, the learned counsel relied upon the decision of the Hon'ble Apex court in ***Civil Appeal. No.6208 of 2022*** in the case of ***Civil Hospital Vs. Manjit Singh & Anr***, wherein it was categorically held that, without negligence on the part of the surgeon who performed the operation, the claim for compensation cannot be countenanced and it was further held that, the sterilized women can become pregnant due to natural causes and it cannot always be attributed due to the failure on part of the Medical professional. Learned counsel further relied upon the decision of the Hon'ble Apex court in ***Civil Appeal No.5128 of 2022 dated 25.08.2005*** in the case of ***State of Punjab Vs. Shiv Ram and Ors***, wherein in Paragraph-17 it was held as hereunder:

“17. We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to



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satisfy Bolam's test. So also, the surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100% exclusion of pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee.”

Learned counsel further submitted that, though the petitioner placed reliance on the decision of this Court in the case of **Dhanam** (stated supra), the said decision was appealed before this Court in W.A.No.2506 of 2022 and the Hon'ble Division Bench of this Court, vide order dated 17.11.2022 stayed the order dated 25.01.2022 in respect of payment of Rs.1,20,000/- per year till the child attains 21 years. Accordingly, he prayed for dismissal of this Writ petition.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

6. Admittedly, the petitioner became pregnant inspite of the family



planning surgery performed by the Doctor attached to the 4th respondent hospital. According to the 4th respondent, merely because the petitioner became pregnant after such surgery, it cannot be attributable on the part of the 4th respondent. Further, in the absence of any lapses on the part of the Doctors in performing such surgery, the claim for compensation cannot be countenanced.

7. It is an indisputable fact that inspite of the family planning surgery, the petitioner became pregnant. Therefore, the general presumption would be that there are lapses in performance of such surgery. Even though the 4th respondent would contend that there are chances for failure of the family planning surgery and it is not 100% effective among 5 per 1000 surgeries, such an averment is generic in nature and it cannot be accepted. When the petitioner claimed that inspite of the surgery she became pregnant, then the burden is on the part of the respondents to show that there are no lapses on the part of the Doctor attached to the 4th respondent in performing the surgery.

8. The counter affidavit filed by the 4th respondent proceeds on a generic notion. Further, taking note of the fact that the petitioner's husband



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died and she is a single mother, who has to shoulder the entire financial burden to nurture her children, this Court is of the opinion that directing the 4th respondent to pay a sum of Rs.3,00,000/-(Rupees Three Lakhs only) would meet the ends of justice.

9. Accordingly, the 4th respondent is directed to pay a compensation of Rs.3,00,000/-(Rupees Three Lakhs only) to the petitioner within a period of two weeks from the date of receipt of a copy of this Court and the respondents are directed to provide free education to the 4th child of the petitioner and all the expenses on books, stationary, uniforms and other miscellaneous educational expenses shall also be met by the respondents.

10. With the above directions, this Writ Petition stands disposed of. No costs.

19.10.2024

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

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