



W.P.(MD)No.1508 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1508 of 2022

and

W.M.P.(MD)No.1313 of 2022

J.Amutha

... Petitioner

Vs.

- 1.The Director,
Medical and Rural Health Services,
DMS Complex, 361, Anna Salai,
Chennai.
- 2.The District Collector,
Kanyakumari District,
Nagercoil.
- 3.The Dean,
Government Medical College Hospital,
Asaripallam, Nagercoil.
- 4.The Joint Director of Health Services,
Kottar, Nagercoil.
- 5.The Deputy Director of Health Services,
Krishnankovil, Nagercoil.
- 6.The Block Medical Officer,
Government Primary Health Centre,
Kuttkuzhy, Veyanoor (Po),
Kanyakumari District.



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7.Swarna Meena

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to pay a compensation of Rs.15,00,000/- to the petitioner and further directing respondents 1 to 5 to take appropriate action against the 6th and 7th respondents.

For Petitioner : Mr.C.T.Perumal

For Respondents : Mr.G.V.Vairam Santhosh,
Addl. Government Pleader for R1 to R6.

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 6.

2.The petitioner underwent family planning operation on 24.07.2018 at Government Primary Health Centre, Kuttakuzhy (sixth respondent herein). The petitioner's case is that notwithstanding the same, she conceived again and gave birth to a child. Seeking compensation, the present writ petition has been filed.



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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.I had occasion to deal with similar cases. It is an established medical fact that family planning operation is not always 100% foolproof. There is scope for occasional failure. The Government has therefore issued government order providing for payment of a consolidated sum of Rs.30,000/-. If the petitioner can demonstrate that the family planning operation itself was negligently performed, then the petitioner will be entitled to compensation. But before me, the materials are utterly insufficient. The Court cannot not infer negligence on the part of the respondents merely because of the conception of the petitioner subsequent to the operation. Vide order dated 22.12.2022 in W.P(MD)No.16857 of 2019, I had held as follows:-

“5.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned Government Advocate, merely because a woman undergoes family planning operation that does not mean that she would not conceive again. This is because any family planning operation has a marginal rate of failure. This has been medically accepted all over the world.



*In the counter affidavit, there is reference to several standard textbooks indicating that such sterilization procedures are not always 100% successful whatever be the technique. That is why, the government has also issued indemnity schemes. Even in the consent form signed by the patient, there is an acknowledgment that the operation can fail. The Hon'ble Supreme Court in the decision reported in **AIR 2005 SC 3280 (State of Punjab Vs. Shivv Ram and Others)** held as follows:-*

“30.The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.”

6.The petitioner would have realized even within the second month that she was pregnant. If she did not want the child, she could have very well terminated the pregnancy. Not having done so, the petitioner cannot claim compensation from the respondents for the cost of bringing up the child. The materials on record are absolutely insufficient to come to the conclusion that the doctor who performed the operation was negligent. Negligence cannot be presumed solely from the fact that the petitioner conceived again. This is for the reason that in certain rare and exceptional cases, even if the operation had been performed in a proper manner, it can still fail. However, the indemnity scheme issued by the Government provides for payment of



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Rs.30,000/- for failure of sterilization. This amount should have been paid to the writ petitioner in the year 2019 itself. In all fairness, the respondents should have acknowledged the claim and paid a sum of Rs.30,000/- to the petitioner after verifying the facts set out in the representation. They have not done so. Therefore, the respondents must not only pay the indemnity scheme amount but also the cost of this litigation. I, therefore, direct the respondents to pay a sum of Rs. 50,000/- to the writ petitioner.”

5.The second respondent is directed to pay a sum of Rs.30,000/- to the petitioner immediately. This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Director,
Medical and Rural Health Services,
DMS Complex, 361, Anna Salai,
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2.The District Collector,
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