



W.P(MD)No.7001 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.7001 of 2022

Valli

... Petitioner

Vs

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Commissioner,
Madurai Corporation,
Madurai.
- 3.The Executive Engineer,
TWAD, Thiru Nagar,
Thiruparakundram Limit,
Madurai.

4.E.Dhanarajan

... Respondents

(R - 4 is impleaded vide order dated 23.12.2022
in W.P(MD)No.16091 of 2022)

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to provide compensation to the petitioner on the basis of the representation of the petitioner dated 28.02.2022.



WEB COPY



W.P(MD)No.7001 of 2022

For Petitioner : Mr.J.C.Rathinavel Pandian
For R – 1 : Mr.D.Gandhi Raj
Special Government Pleader
For R – 2 : Mr.K.K.Kannan
For R – 3 : Mr.R.Satheesh
For R – 4 : Mr.D.Kribakaran

ORDER

This Writ Petition has been filed by the petitioner for a direction, directing the respondents to pay compensation to the petitioner on the demise of her husband due to negligence on the part of the respondents.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The petitioner's husband was working as a security on a contract basis in SBOA School situated at Nagamalaipudukottai, Madurai District. While being so, on 01.10.2009, when her husband was proceeding to his house from the School by his bicycle near



W.P(MD)No.7001 of 2022

Utchaiya Temple, he fell into the pit which was dug by the fourth respondent for the purpose of laying water pipeline to the depth of 10-1/2 feet. Therefore, he sustained grievous injuries and died on the spot. Opposite to Balar Illam near Uthchaiya Temple, there was pipeline work under progress. Due to which, a pit was dug and it was kept open without any safety measures such as a caution board, signal, diversion and any barricade. While the petitioner's husband was returning to his house at about 08.15 p.m., by his bicycle fell into the pit and sustained grievous injuries. The Thiruparankundram water supply scheme work was executed by the TWAD Board, Urban Division, Madurai. The said work was allotted in favour of the contractor M/s.The IHP Company Limited, Mumbai, who in turn had given a sub-contract to the fourth respondent to execute the work order. There is no quarrel over the sub-contract allotted in favour of the fourth respondent by the original contractor M/s.IHP Company Limited.

4.The learned counsels appearing for the respondents 1 to 3 relied upon the Judgment of the Hon'ble Supreme Court of India in ***Karnataka Power Corporation Limited and another Vs. K.Thangappan and another*** reported in **2006 (4) SCC 332**



W.P(MD)No.7001 of 2022

in which the Hon'ble Supreme Court of India held that the delay or laches is one of the factors that is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. Therefore, this Court may refuse to allow the claim petition, if there is such negligence or omission on the part of the applicant to assert his right.

5.On perusal of the records would reveal that in pursuant to the said occurrence, a complaint was lodged by the son of the petitioner and the same was registered in Crime No.579 of 2009 for the offence punishable under Section 304A of I.P.C as against the fourth respondent on the file of the Inspector of Police, Thirunagar Police Station, Madurai. After completion of the investigation, the Inspector of Police, Thirunagar Police Station filed a final report for the offences under Sections 283 and 304(A) of I.P.C and the same has been taken cognizance in Spl.S.C.No.128 of 2009 on the file of the Judicial Magistrate No.VI, Thirumangalam and it is pending for trial. As per the charge sheet, the fourth respondent admittedly dug up a pit in order to lay a water pipeline as per the work order adjacent to Thirunagar – Thenpalanzhi road. It was kept open without any safety measures and due to which,



W.P(MD)No.7001 of 2022

the deceased fell into the pit and sustained grievous injuries. He succumbed to injury. Therefore, the accident happened only due to the negligence on the part of the fourth respondent, who is the contractor. Therefore, the respondents 1 to 3 are not liable to pay any compensation as there was no negligence on their part. The fourth respondent is liable to pay compensation.

6.The learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Division Bench of this Court in the case of the **Commissioner Vs. State of Tamil Nadu** reported in **2017 (2) CTC 119** and the Hon'ble Division Bench of this Court discussed in detail about the quantum of compensation to be fixed in the Writ Petition. It is relevant to extract the relevant portion of the judgment hereunder:

'40. On the contention that the compensation awarded to the second respondent, is a windfall, and that, even the Motor Accident Claims Tribunal would not have awarded such quantum of compensation as done by the writ court, perusal of the order impugned shows that while estimating the loss of income, love and affection and such other factors to be taken into consideration, the writ court has held as follows:

"18. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor



W.P(MD)No.7001 of 2022

Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 (C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.S.Somanathan & Others v. District Insurance Officer & Another).

19. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim v. Raju). In para 9 it is held thus,

"9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

In (2009) 13 SCC 422 (Reshma Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus,



WEB COPY



W.P(MD)No.7001 of 2022

"26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

7. According to the petitioner, the monthly salary of her husband was Rs.4,000/- per month. At the time of his death, he was aged about 50 years. On perusal of the post mortem report would reveal that the cause for death due to a neck injury. The neck injury happened due to a fall in the deep pit. Therefore, there is no quarrel over the death of the deceased due to falling into the deep



W.P(MD)No.7001 of 2022

pit dug by the fourth respondent. Though the petitioner did not file any document to show that her husband was employed as security in the private School and he was paid a salary of Rs.4,000/- per month, considering the nature of the work, this Court is of the considered view to fix the monthly salary of the deceased as Rs.7,500/- per month. The deceased is a married man and gave birth to a son. The Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 609 (SC)**, has concluded that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Since the deceased was aged 50 years and was self-employed, 25% of the income has to be added towards future prospects and on such addition, the monthly income comes to Rs.9,375/- {Rs.7,500/- + Rs.1,875/- (25% of the income)}. Since the deceased has a wife and a son, one-fourth of the income has to be deducted towards personal and living expenses of the deceased and after such it comes to Rs.7,032/- {Rs.9,375 - Rs.2,343} and rounded off to



W.P(MD)No.7001 of 2022

Rs.7,000/-. As per the decision of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TNMAC 1 (SC)***, the proper multiplier would be '13'. Hence the loss of dependency would be Rs.10,92,000/- (Rs.7,000/- X 12 X 13). The wife and son of the deceased are entitled to get Rs.1,00,000/- each towards loss of love and affection, a sum of Rs.25,000/- is awarded towards funeral expenses and a sum of Rs.25,000/- is awarded towards transportation and other miscellaneous expenses. Accordingly, the petitioner is entitled to get the compensation as follows:

Sl.No.	Description	Amount awarded Rs.
1.	Loss of dependency	10,92,000/-
2.	Loss of love and affection to the petitioner and son	2,00,000/-
3.	Funeral Expenses	25,000/-
4.	Transportation and other charges	25,000/-
Total		13,42,000/-

8.In view of the above, the petitioner is entitled for a sum of Rs.13,42,000/- as compensation. The fourth respondent is directed to pay the sum of Rs.13,42,000/- along with interest at the rate of 6% per annum from the date of the representation submitted by the petitioner, dated 28.02.2022 till the date of



W.P(MD)No.7001 of 2022

realization, to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. The compensation amount shall be apportioned by the petitioner and his son as 50% each.

9. With the above directions, this Writ Petition is allowed.

There shall be no order as to costs.

26.11.2024

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



W.P(MD)No.7001 of 2022

WEB COPY

To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Commissioner,
Madurai Corporation,
Madurai.
- 3.The Executive Engineer,
TWAD, Thiru Nagar,
Thiruparakundram Limit,
Madurai.



WEB COPY



W.P(MD)No.7001 of 2022

G.K.ILANTHIRAIYAN, J.

ps

Order made in
W.P(MD)No.7001 of 2022

26.11.2024