



W.P(MD)No.14621 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14621 of 2020

Selin Rejini

... Petitioner

Vs.

1.The Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, St.George Fort, Chennai.

2.The Executive Engineer,
TWAD Board (Project Division),
No.34, Jawahar 3rd Street,
Near Gopala Pillai Hospital,
Nagercoil, Kanyakumari District.

3.Koya & Company Construction Limited,
Rep. by its Managing Director /Chairman,
No.12-2-831/38, 72, MIGH, Mehdipatnam,
Hyderabad – 500 028, Telangana.

4.The Inspector of Police,
Kotticode Police Station,
Kanyakumari District.

*(R4 is suo motu impleaded vide order dated
04.01.2024 in W.P.(MD)No.14621 of 2020 by GRSJ)*

5.The Superintendent of Police,
Kanyakumari District.

... Respondents

*(R5 is suo motu impleaded vide order dated
19.01.2024 in W.P.(MD)No.14621 of 2020 by GRSJ)*



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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 grant compensation of sum of Rs.50,00,000/- to the petitioner for the death of her husband Alwyn Kumar.

For Petitioner : Mr.M.Gnanagurunathan

For Respondents : Mr.T.Villavankothai,
Addl. Government Pleader for R1.
Mr.R.Satheesh for R2.
Mr.B.Saravanan, Senior Counsel,
For Mr.D.Kirubakaran for R3.
Mr.A.Albert James,
Govt. Advocate (Crl. Side) for R4 & R5.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the first respondent, the learned standing counsel for the second respondent, the learned senior counsel for the third respondent and the learned Government Advocate (Crl. Side) for the respondents 4 and 5.

2.The petitioner's husband / Alwin Kumar was riding a two wheeler on 04.08.2020 in Mekkamandapam – Verkilambi Road at around 08.00 pm. There was also a pillion rider. The vehicle fell into a pit. The petitioner's husband fell down and suffered head injury. He was taken to hospital. Even though



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treatment was provided to him, he died a day later. In this regard, Crime No.190 of 2020 was registered on the file of the fourth respondent. Contending that the accident would not have occurred, if the pit dug by TWAD Board had been filled in time, the petitioner claimed compensation. Her request was not considered by TWAD. Hence, the present writ petition came to be filed.

3.I wanted to know the exact cause of death and as to how the accident had occurred. On 19.01.2024, the following order was passed:-

“The Superintendent of Police, Kanyakumari District.” is suo motu impleaded as the fifth respondent.

2.Mr.A.Albert James, learned Government Advocate takes notice for the impleaded respondent.

3.Registry is directed to make necessary changes in the cause title.

4.The petitioner's husband Thiru.Alwin Kumar died in an accident on 04.08.2020. He was riding a two wheeler. His friend Jinu was the pillion rider. The occurrence had taken place at Mekkamandabtam, Verkilampi Road. The two wheeler had fallen into a pit. Alwin Kumar suffered head injury and died as a result. In this regard, Jinu lodged complaint and it was registered as Crime No.190 of 2020 on the file of Kotticode Police Station.



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5.I wanted to know from the learned Government Advocate as to what happened to the investigation. Today when the matter was taken up for hearing, the learned Government Advocate produced copy of the final report dated 17.11.2020. The Investigation Officer had closed the case as charge abated. In this case the deceased was shown as accused. He was riding two wheeler and had fallen into a pit.

6.The case of the petitioner is that on account of non-installation of warning boards, the occurrence had taken place. The Investigation Officer ought to have conducted investigation and rendered a specific finding if the contractor was at fault or if the occurrence had taken place on account of negligence on the part of the rider. Without taking specific stand, a cursory and final report has been filed closing the case as mistake of fact. The investigation is most unsatisfactory. It is not known if the final report has been accepted by the jurisdictional Magistrate. The Superintendent of Police shall nominate a District Superintendent of Police for conducting further investigation and filing of report for assisting this Court in this writ petition.

7.The learned Standing Counsel for TWAD Board also states that during the relevant time, risk insurance cover was very much available. The learned Senior Counsel appearing for the third respondent is called upon to make a statement in this regard.

8.Call this case on 12.02.2024.”



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4. Pursuant to the direction given by this Court, the Deputy Superintendent of Police, Thukalay Sub Division, Kanyakumari District conducted enquiry and submitted a report before this Court. The report clearly indicts the respondents 2 and 3. It is stated that TWAD Board had engaged the third respondent for laying water supply pipes in the petition mentioned road. It is stated that the road was dug by employing JCB. But then, the road was not restored to the original condition. It is also stated that warning boards had not been installed. The petitioner's husband without realizing that there is a pit lying ahead had fallen into the same.

5. The learned senior counsel for contractor / third respondent would state that the pit was dug only on the road margin. Even though the third respondent would strongly contend that they had carried out their work properly and that they cannot be blamed for the occurrence, it is an unsubstantiated claim. It does not explain the occurrence. I am inclined to accept the report submitted by the Deputy Superintendent of Police, Thuckalay. The said report clearly and categorically states that only because of the negligence of the men employed by the third respondent, the accident had occurred.



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6.The third respondent had filed counter affidavit and the learned senior counsel would state that the petitioner's husband is also guilty of contributory negligence. It is not in dispute that the petitioner's husband had not worn a helmet. If only he had worn helmet, certainly, he would not have suffered head injury. Therefore, this aspect of the matter will have to be borne in mind while quantifying the compensation payable. The petitioner's husband was aged about 42 years. As per the decision reported in **(2009) 6 SCC 121 (Sarla Verma and Others vs Delhi Transport Corporation and Another)**, the multiplier is 14. The petitioner would claim that her husband was earning around Rs.35,000/- per month. She had also enclosed a certificate issued by one Sathiya Blue Metals in this regard. This certificate by itself does not inspire my confidence. If the employer had placed material to show that this amount was credited in the petitioner's husband's bank account every month, I would certainly go by the same. A mere letter without any supporting material cannot be accepted as such. I cannot go by the *ipse dixit* of the so-called employer “Sathiya Blue Metals”. There is no material even to indicate that there was any employer-employee relationship between the petitioner's husband and the said Sathiya Blue Metals. Inclusive of future prospects, I would reckon the earning of the deceased at Rs.15,000/- per month. The couple were blessed with three children. One can assume that the petitioner's husband would have



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spent 1/4th of the earning for himself. The loss of income is estimated at Rs. 18,90,000/-. Loss of consortium including parental consortium would come to Rs.1,60,000/-. A sum of Rs.30,000/- for loss of estate and funeral expenses have to be added. The total compensation comes to Rs. 20,80,000/-. After deducting 10% towards contributory negligence, the total compensation payable to the petitioner is Rs.18,72,000/-.

7.The third respondent is directed to pay the above amount at the rate of interest of 6% per annum. Rs.10,00,000/- shall be directly paid to the petitioner. The remaining amount shall be divided into three shares and deposited in the names of all the three children in any nationalized bank. The petitioner can withdraw the interest once in six months. The respective children in whose names the fixed deposits have been created can withdraw the same, once they attain majority. It is open to the petitioner to accept this order. If the petitioner is accepting the aforesaid amount from the third respondent, it shall be in full quit.

8.This writ petition is partly allowed. No costs.

12.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To:

- 1.The Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat, St.George Fort, Chennai.
- 2.The Inspector of Police,
Kotticode Police Station,
Kanyakumari District.
- 3.The Superintendent of Police,
Kanyakumari District.

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