



W.P.(MD) No.2528 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.2528 of 2018

Latha, W/o.Neethirajan

... Petitioner

Vs.

- 1.The Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai.
- 2.The District Collector,
Collector Office,
Madurai,
Madurai District.
- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Madurai District,
Madurai.
- 4.Veerapathiran, H.C.1711,
S/o.Kanthasamy

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 3 to give compensation of Rs.30 00 000/- for loss of right eye of the petitioner's son namely, Premnath and consequently, to take appropriate action as against the fourth respondent by considering the representation dated 14.12.2017.



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For Petitioner : Ms.Nila
for Mr.R.Manoharan

For R1 and R2 : Mr.S.P.Maharajan
Special Government Pleader

For R3 : Mr.A.Albert James
Government Advocate (Criminal side)

For R4 : Mr.P.R.Prithiviraj

ORDER

This Writ Petition has been filed by the petitioner for a Mandamus, to direct the respondents to pay a sum of Rs.30,00,000/- for loss of right eye sight to the petitioner's son namely, Premnath, who was allegedly injured by the fourth respondent on 18.12.2016 after he was hit by the fourth respondent with Lathi on his right eye.

2. The learned counsel for the petitioner submits that immediately, after the incident, a complaint was also lodged on 20.12.2016 with Samayanallur Police Station, Madurai, which has been numbered as Petition No.341 of 2016.

3. The learned counsel for the petitioner further submits that the petitioner's son namely, Premnath, who is now a major, was also



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examined by the Aravind Eye Hospital, Madurai. After examination, a report dated 15.06.2016 was given by the Hospital Authorities. In the said report, it has been stated that the petitioner's son viz., Premnath, aged 17 years at that time, was admitted with complaints of redness in right eye since three months and had an alleged history of trauma [closed globe injury] two months in right eye prior to his visit and was on anti glaucoma medication for the period. The Hospital Authorities have confirmed Glaucomatous optic atrophy in the petitioner's son's right eye.

4. The learned counsel for the petitioner also submits that due to loss of her son's right eye sight, he was not able to concentrate in his studies and therefore, her son's academic life was affected. Hence, the petitioner has sent a representation dated 14.12.2017 to the respondents 1 to 3 seeking compensation to her son namely, Premnath, who was lost is right eye sight due to the attack by the fourth respondent. However, the respondents have failed to consider the same. Hence, the present Writ Petition.

5. The learned Special Government Pleader for the respondents 1 and 2 and the learned Government Advocate (Criminal side) for the third



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respondent would submit that the petitioner's son was riding a motorcycle on 17.12.2016 without a driving licence and got himself injured when the fourth respondent was attempting to stop him. It is submitted that there was a case registered in Crime No.419 of 2016 on the file of the Samayanallur Police Station, Madurai, for the offences under Sections 457 and 394 of the I.P.C. and that the third respondent had given directions to find out the accused persons in the above said crime number.

6. It is further submitted that the fourth respondent was on duty near the E.B. Office, Samayanallur - Vilangudi Road along with one Vigneshwaran. The petitioner's son Premnath was riding the motorcycle along with two other persons as pillion riders in a rash and negligent manner without wearing Helmet and therefore, an attempt was made to stop the motorcycle with Lathi. Unfortunately, the Lathi hit in the face of Premnath and they fell down on the road and the petitioner's son suffered injury on his right eye.

7. It is further submitted that the Police had acted in accordance with law, as the petitioner's son being a minor should not have been allowed to drive a motorcycle with two pillion riders. The petitioner



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herein as a prudent parent ought to have taken sufficient care to ensure that her son was not allowed to drive any vehicle, since he has not attained majority and moreover, due to his age, he could not have been granted licence to drive the vehicle.

8. It is further submitted that the enquiry conducted by the then Inspector of Police, Samayanallur Police Station disclosed that the fourth respondent or the vehicle checking unit was not responsible for the injury sustained by the petitioner's son and that the petition enquiry was closed and a copy was served on the petitioner herein. Had the allegation been true, the petitioner would have initiated appropriate proceedings against the fourth respondent and would not have waited till 20.12.2016.

9. It is further submitted that even as per the petitioner's own statement, her son drove the motorcycle on 12.12.2016. The petitioner had sent a representation only on 14.12.2017 and had filed the present Writ Petition only on 06.08.2018. It is further submitted that from the report, it cannot be concluded that the injury and the consequential absolute Glaucoma was only due to the Lathi. When the enquiry revealed that he fell down headlong and sustained injury on his right eye, there are



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disputed questions of fact and the petitioner has to prove the same only before the Civil Court or she should have challenged the enquiry report of the Police and sought for appropriate remedy before the competent Court.

10. It is also submitted that the compensation sought for cannot be decided in the present Writ Petition, since there are disputed questions of facts as to the cause of injury and the consequential Glaucoma. There are no merits in the contention of the petitioner and therefore, she is not entitled for the discretionary relief of this Court and thus, the present Writ Petition is liable to be dismissed at the threshold.

11. I have considered the arguments advanced by the learned counsel for the parties.

12. Today, when the matter was taken up for hearing, the learned counsel for the petitioner has filed a calculation for the compensation that is to be awarded if the decision of the Hon'ble Supreme Court in **Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Another**, 2009 (6) SCC 121 is followed. The calculation given by the petitioner reads as under:-



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"1. **Notional Income:** For a non-earning person, a notional income is considered. According to the Sarla Verma case, for a student or someone who is not earning, the notional income can be considered. This notional income is usually based on the minimum wages or a reasonable estimation. Assume the notional income is Rs.15,000 per month.

2. **Future Prospects:** As the petitioner has completed a B.Sc. in Information Technology and an IT job involves extensive use of vision, it is reasonable to assume that the income could double in the future due to career progression in I.T. Hence, we can consider a 100% increase for future prospects.

Future Monthly Income: Rs.15,000 + 100% of Rs.15,000 = Rs.30,000.

Annual Income: Rs.30,000 × 12 = Rs.3,60,000 per year.

Multiplier: For a 17-year-old, the multiplier according to the Sarla Verma case would be 18.

Total Loss of Income: Rs.3,60,000 × 18 = Rs.64,80,000.

Disability: For the loss of one eye, considering the loss of earning capacity as 30%.

Loss of Earning Capacity: 30% of Rs.64,80,000 = Rs.19,44,000.

3. Non-Pecuniary Damages

Pain and Suffering: Rs.2,00,000.

Loss of Amenities of Life: Considering the significant impact on life, including marriage



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prospects, not able to obtain driving license and employment limitations: Rs.3,00,000.

Medical Expenses: Rs.50,000

4. Total Compensation

Loss of Earning Capacity: Rs.19,44,000.

***Non-Pecuniary Damages: Rs.2,00,000 +
Rs.3,00,000 = Rs.5,00,000.***

Medical Expenses: Rs.50,000.

***Total Compensation: Rs.19,44,000 +
Rs.5,00,000 + Rs.50,000 = Rs.24,94,000."***

13. Further, this Court vide order dated 26.04.2024, directed the petitioner's son to appear before the Medical Board attached to the Government Rajaji Hospital, Madurai, for obtaining an Evaluation Report regarding his eye's position. Pursuant to the said order, the petitioner's son has appeared before the Medical Board attached to the Government Rajaji Hospital, Madurai, and the Dean, Government Rajaji Hospital, Madurai, has sent the opinion of the Chairman, Regional Medical Board, Government Rajaji Hospital, Madurai, dated 04.06.2024, which reads as under:-



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ON EXAMINATION

Vision Right Eye NO Perception of light,

Left Eye 6/6

RE LID Normal

Circumcorneal congestion

Cornea hazy due to corneal oedema

Equatorial staphyloma present

Anterior chamber deep

Iridodonesis present

Pupil 5.5 mm .dilated not reacting to light

Phacodonesis present

Total cataractous lens

LE Anterior segment normal.

Eom full

FUNDUS RE -No view due to cataract

FUNDUS LE normal

INVESTIGATIONS

GONIOSCOPY



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IOP RE -46.9 mmHg

LE-16mmHg

Colour vision - Right Eye could not be done because of no vision
-Left Eye Normal

Visual fields Right Eye -Could not be done because of No vision.
Left Eye- Normal.

OCT Right Eye -Could not be done because of total cataract
Left Eye - Normal.

B SCAN Right Eye -media opacities present
Left Eye -Normal.

A SCAN - Right Eye -28.5mm
Left Eye -23.5 mm

DIAGNOSIS - Right Eye - ABSOLUTE GLAUCOMA
COMPLETE BLINDNESS

VISUAL DISABILITY -THIRTY PERCENT-(30%)

Left Eye - NORMAL.



[Signature]
04/01/2019
Member
Dr. S. RAVIKUMAR, M.S.(OPH)
Reg. No. 52362
PROFESSOR
DEPARTMENT OF OPHTHALMOLOGY
MADURAI MEDICAL COLLEGE
GOVT. RAJAJI HOSPITAL
MADURAI - 625 020

[Signature]
Member
Dr. P. Ganeshm.
CHIEF CIVIL SURGEON
GOVT. RAJAJI HOSPITAL
MADURAI-20.

[Signature]
Chairman
REGIONAL MEDICAL SOCIETY
Govt. Rajaji Hospital
MADURAI - 20
Dr. S. Ravi Sankar M.S.



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14. The facts are not in dispute that the accident had taken place when the fourth respondent was on duty. The incident took place when the fourth respondent attempted to block the petitioner's son, who was riding a motorcycle with two other persons in triple without wearing Helmet. In the said incident, the petitioner's son suffered an injury on his right eye. There are no other known cause of injury to the petitioner's son. The petitioner's son was aged about 17 years at that point of time.

15. The opinion of the Chairman, Regional Medical Board, Government Rajaji Hospital, Madurai, dated 04.06.2024, indicates that the petitioner's son's right eye has Absolute Glaucoma Complete Blindness. Thus, it has rendered the petitioner's son partially / visually impaired leaving no scope for pursuing his regular avocation.

16. The petitioner's son ought not to have been allowed to ride a two wheeler. The petitioner's son was at fault. The petitioner as a parent ought to have been careful in not allowing her son to be an accessory to commit offence under the provisions of the I.P.C. and the Motor Vehicles Act, 1988. At the same time, there is also no justification for the injury cause to the petitioner's son. Under these circumstances, this Court is



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inclined to award a sum of Rs.12,50,000/- as compensation to the petitioner's son for the injury caused to him by the fourth respondent by reducing the compensation by 50%. The fourth respondent as an Officer of the State Police acted within the Station of his duty although in excess. Therefore, the fourth respondent should not be penalized. The amount of Rs.12,50,000/- is directed to be paid by the second respondent to the petitioner together with interest at 6% p.a. from the date of incident till the date of payment. It is expected that this amount will be paid to the petitioner's son directly within a period of six weeks from the date of receipt of a copy of this order.

17. This Writ Petition stands disposed of with the above observation. No costs.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

23.07.2024

To

1.The Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai.



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2.The District Collector,
Collector Office,
Madurai,
Madurai District.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Madurai District,
Madurai.



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C.SARAVANAN, J.

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