



W.P(MD)No.5622 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Pronounced on : 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Jeyabalakrishnan

... Petitioner

Vs

- 1.The Secretary to the Government,
Home Department,
Secretariate,
Chennai.
- 2.The District Collector,
Office of the Collectorate,
Madurai.
- 3.The Commissioner,
Madurai Corporation,
Madurai.
- 4.The Tahsildar,
Madurai South,
Taluk Office Collectorate Building,
Madurai.



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5.The Assistant Director,
Archeology Department,
Mahal Building,
Madurai.

..Respondents

(R5 is Suo Motu Impleaded Vide Court Order Dated 22.04.2022 in WP(MD).
5622/2014 by BPJ).

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 the compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the Petitioner for the death of his son Majojkumar on 16.12.2010 due to the negligent of the third respondent.

For Petitioner : Mr.D.Senthil
For R1,R2,R4 & R5: Mr.S.Shaji Bino
Special Government Pleader
For R3 : Mr.R.Murali

ORDER

The petitioner, a lorry driver, who has lost his son, namely Manoj Kumar aged about 18 years on 16.12.2010 due to the fall of cement concrete advertisement board, belonged to the third respondent/Madurai Corporation, has made a request seeking compensation for the death of his son. The District Collector,



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Madurai/the second respondent by her letter in Na.Ka.No. 31750/2010/T3, dated 21.01.2011 has forwarded the petitioner's representation to the third respondent/Madurai Corporation for necessary action. However, the representation of the petitioner was not considered by the third respondent. Therefore, the petitioner has approached this Court for a Mandamus in the year 2014, directing the respondents to pay compensation of Rs.20,00,000/- to the petitioner for the death of his son Manoj Kumar.

2.The learned counsel appearing for the petitioner submits that the petitioner's son Manoj Kumar went to meet his relative, who has run a shop near Periyar Bus stand, Madurai and at that time, a cement concrete advertisement board belonged to the Madurai Corporation/the third respondent herein fell down on his son and he died on the spot itself. According to the petitioner, the Advertisement Board was maintained by the third respondent Corporation in a negligent manner and on account of that, the petitioner's son died. The learned counsel has also relied on the



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recommendations of the District Collector to the third respondent Corporation for payment of compensation.

3.This writ petition was filed on 01.04.2014. This Court, by order dated 02.04.2014 has ordered notice to the respondents. The fourth respondent/the Tahsildar has filed a counter affidavit on 17.04.2014 that the death was caused due to improper maintenance of cement concrete Advertisement Board belonged to the third respondent and the third respondent is liable to pay compensation. The petition given by the petitioner was also sent to the third respondent for appropriate action. The Tahsildar has also stated that for the incident taken place, the Village Administrative Officer has lodged a complaint before the Inspector of Police, Thideer Nagar Police station and the same was registered in Crime No.2586 of 2010 under Section 174 Cr.P.C. The request of the petitioner for compensation was forwarded by the District Collector, Madurai to the third respondent, the Commissioner, Madurai Corporation for necessary action by his proceedings in Na.Ka.No.31750/2010/T3,



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dated 21.01.2011. In paragraph 9 of the counter affidavit, the Tahsildar has confirmed the other averments made by the petitioner that he is a lorry driver and his son was working as a cook and the same is extracted as under:-

“9.The petitioner is working as a lorry driver in a private company on a monthly salary of Rs.5,000/-. He has got one son and one daughter. His son Manojkumar is aged about 19 years. He had studied eighth standard. The petitioner's son was working as a cook in a private Idly Shop and earning Rs.300/- per day. The petitioner's wife is not working and she is a housewife. There are no landed properties to the petitioner. The petitioner is living in a rental house. Since the only earning member has expired, due to accident, the petitioner is suffering too much for winning his bread. The petitioner deserves compensation to be paid.”

4.The petitioner and the fourth respondent have made a specific averment as against the third respondent Corporation that the third respondent is responsible for the death and the third respondent is liable to pay the compensation for the death of the



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petitioner's son. However, the third respondent has not filed any response to this writ petition. When this writ petition was taken up for hearing on 22.04.2022, a representation was made on behalf of the third respondent Corporation that the advertisement board which caused the death to the petitioner's son belonged to the Archeology Department and it is not belonged to the Corporation. Therefore, this Court by order, dated 22.04.2022 has impleaded the Archeology Department, Madurai as a respondent to this writ petition. The Archeology Department has entered appearance and denied the averment made by the Corporation. A counter affidavit was also filed to that effect. The counsel for the third respondent Corporation has requested some time to file a reply affidavit to the counter affidavit filed by the Archeology Department and therefore, at request of the learned counsel for the third respondent/Corporation, the case was adjourned to 05.06.2023 for filing a reply affidavit. However, the third respondent Corporation has neither filed their counter affidavit nor filed their reply affidavit to the counter affidavit of the Archeology Department.



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5.In the meantime, this Court has also directed the Special Government Pleader to ascertain the facts about the maintenance of the Advertisement Board which caused the accident from the District Collector. The District Collector submitted a report on 07.06.2023 that she has conducted an enquiry and found that the place, where the accident had taken place is belonged to Madurai Corporation and in the Town Survey Records, this place in Ward No. 4, Block No.20, TS.No.1862 to an extent of 1.4795 sq.meters is recorded as a cycle stand of Madurai Corporation. Therefore, it is the responsibility of the Corporation to pay the compensation to the petitioner and has also made a request to the Commissioner to take necessary action to pay the compensation for the accident occurred on account of Advertisement board, which was erected and maintained by Madurai Corporation.

6.Considering the volume of advertisement boards erected in various places of Madurai City, this Court has also



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appointed Mr.Arul Vadivel Sekar, a senior Advocate as a *Amicus Curiae* to assist this Court and the *Amicus Curiae* has also filed a report.

7.This Court has considered the rival submissions made and also perused the materials placed on record including the report of the *Amicus Curiae*.

8.The petitioner is a lorry driver working in a private Company for a meagre salary. His only son, who is aged about 18 years died on 16.12.2010 due to fall of cement concrete advertisement board belonged to the third respondent Corporation. The petitioner has made a request for compensation and his request was also considered and forwarded by the District Collector to Madurai Corporation by his proceedings dated 21.01.2011. The third respondent has not acted upon this recommendation and therefore, the petitioner has approached this Court by way of this writ petition in the year 2014. This writ petition was entertained by this Court and



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a notice was ordered to the respondents. The fourth respondent/Tahsildar alone has filed their counter affidavit and the third respondent Corporation has not filed their response. However, an irresponsible representation has been made before this court on behalf of the Madurai Corporation that the Corporation is not responsible for the accident and the Board caused the fatal accident was maintained by the Archeology Department. Based on such representation of the Corporation, the Archeology Department was also impleaded as the fifth respondent to this writ petition. The Archeology Department was also made to file a counter affidavit and they have specifically denied that they do not have any advertisement board in the place, where accident has taken place. The third respondent Corporation has took time for filing a reply affidavit to the counter affidavit filed by the Archeology Department and did not file any reply affidavit.

9. In view of the two versions placed before this Court on the maintenance of the advertisement Board, this Court directed



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the District Collector to conduct an enquiry and to file a report. The District Collector who has already burdened with heavy work was made to conduct an enquiry and a report is filed before this Court that the place of occurrence stands in the name of the Madurai Corporation and the Advertisement Board is belonged to the Madurai Corporation. Even after this report, the third respondent has not come forward to file any response to this writ petition. This attitude of this third respondent is condemnable and it is also an act of perjury for making such a false statement before this Court. However, this Court is not inclined to deviate from the issue of relief sought for by the petitioner.

10.The undisputed facts which is available before this Court are as under:-

- i. The petitioner is a lorry driver working in a private company.
- ii. The petitioner's son Manoj Kumar aged about 18 years died on 16.12.2010 due to the fall of a cement concrete Advertisement Board belonged to the third



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respondent/Madurai Corporation.

- iii. The deceased Manoj Kumar is the only son of the petitioner.
- iv. The Tahsildar/the fourth respondent in his counter affidavit has stated that the petitioner's son was working as a cook in a private shop and was earning Rs.300 per day. This averment was not denied by the third respondent Corporation.
- v. A question of granting compensation in this writ jurisdiction was already settled by the Honourable Supreme Court as well as this Court that if the facts are not disputed, the legal heirs of the victims on riot, custodial killing or death due to negligence on the part of the state authorities can claim compensation in writ proceedings.

11. In this case, there is no dispute on the material facts.

This petitioner's son died on 16.12.2010, due to fall of advertisement board and advertisement board which caused the death of the



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petitioner's son was maintained by the third respondent Corporation.

The District Collector has also forwarded the request of this petitioner for compensation and for necessary action to the third respondent Corporation by his proceedings dated 21.01.2011. However, the third respondent Corporation has not acted upon it.

12. When a tree stands on a road side fell on a car resulting in loss of two lives, this Court has passed an order of compensation in W.P.No. 20081 of 2007 and this Court has issued a Mandamus directing the Chennai Corporation to pay the compensation to the victims that there is a negligence on the part of the officials. The relevant paras of the said judgment is extracted as under:-

14. The State or its instrumentality is bound to protect the person and property of every citizen and if it fails to discharge its duty, the State is liable to pay damages to the victims. The State cannot claim defence of sovereign immunity in case of tortious acts done by its employees. The State can fix accountability on its officials and initiate recovery proceedings for the loss sustained by it. The said principle is decided by the Supreme Court in the decision



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reported in 2010 (3) LW 421 (SC) (Eureka Forbes Limited v. Allahabad Bank & Others) (para 44 & 45).

15.The payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India, is no longer res integra. In this regard, the following decisions can be usefully referred to.

(i)In AIR 2000 SC 988 : (2000) 2 SCC 465 (Chairman, Railway Board v. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In AIR 2001 SC 3668 : (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities.

(iii) In (2005) 9 SCC 586 (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants.

(iv) In 2011 AIR SCW 4916 (Delhi Jal Board v. National



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Campaign for Dignity and Rights of Sewerage and Allied Workers), the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government.

Insofar as our High Court is concerned, the said issue is dealt with in several cases. Few decisions are as follows:

(a) 2001 WLR 174 (C.Chinnathambi v. State of Tamil Nadu) - Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt.R.Dhanalakshmi v. Government of Tamil Nadu) - Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) 2004 WLR 611 (DB) (The Chief Secretary to the Government of Tamil Nadu v. Mrs.R.Selvam) - Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C.Thekkamalai v. State of Tamil Nadu) - The Division Bench enhanced the compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) v. State of Tamil Nadu & Another) - A sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased.



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(f) 2008 (6) CTC 144 (*P.N.Kanagaraj v. Chief Secretry, State of Tamil Nadu*) - Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) 2009 (1) CTC 434 (*Subramaniam v. State of Tamil Nadu*) - A sum of Rs.3.50 lakhs was directed to be paid for the death of a student in the school due to negligence of the Government School Teacher.

(h) 2010 WLR 851 (DB) : 2010 (1) CWC 455 (*T.Sekaran v. State of Tamil Nadu & Others*) - A sum of Rs.9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (*The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department*) - A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) 2011 (6) CTC 636 (*P.Ravichandran v. The Government of Tamil Nadu*) - A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) 2012 (2) CTC 848 (*Ganesan v. The State of Tamil Nadu*) - A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (*V.Ramar v. Director of*



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Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In (2011) 1 MLJ 1329 (Thangapandi v. Director of Primary Health Services) - A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P.No.23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

16. It is the specific case of the petitioner that at the age of 14 years petitioner has lost his father and mother, their affection and all comforts. Petitioner's father, on the date of death, was earning a sum of Rs.18,526/- per month as he was employed as Assistant Director at the Office of the Director, Highways Research Station, Chennai-32. He has passed master's degree in Urban Engineering and was doing Ph.D in Anna University. Petitioner's mother also passed M.A., B.Ed and M.Phil degrees, who served as a teacher in a Matriculation Higher Secondary School and was earning monthly salary of Rs.2,500/- per month. Both of them were having better prospects as they were aged 42 and 38 years respectively at the time of their death. The petitioner has claimed a sum of Rs.15 lakhs for the loss of



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his father and Rs.7 lakhs for the loss of his mother. Petitioner is already paid a total sum of Rs.1 lakh from the Chief Minister's Relief Fund on 3.12.2005.

17. *Now the issue to be decided is what amount the petitioner is entitled to get as compensation for the loss of his father and mother.*

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



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"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,

"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



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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."

This Court is bound to bear-in-mind the above stated principles for arriving at just compensation.

20. *Petitioner's father was aged 42 years and was earning Rs.18,526/- per month prior to pay revision to the Government Servants made in the year 2006. Thus, leaving one third to his personal expenses, a sum of at least Rs. 12,000/- per month should have been contributed to the petitioner and his mother. He might have spent Rs.2,000/- per month towards his wife i.e, to the petitioner's mother. Thus, a minimum of Rs.10,000/- per month could have been available as earnings. Petitioner's father's age of retirement being 58 years, minimum 15 multiplier must be applied as he was aged 42 at the time of death. Thus, Rs. 10,000/- per month to 15 years comes to Rs.18 lakhs (Rs.*



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10,000 x (12 x 15)).

21. *Petitioner's mother was earning Rs.2,500/- per month as a teacher with better prospects. Even as a home maker, she is entitled to earn Rs.3,000/- per month. She was aged 38 years and considering her educational qualifications, she should have earned minimum of Rs. 4,500/- per month in future and after deducting one third for her personal expenses, she might have contributed Rs. 3,000/- to her family. As she was aged 38 years, 16 multiplier is to be adopted. Thus, the compensation can be arrived at Rs.5,76,000/- (Rs.3,000 x (16 x 12)). In toto, the petitioner is entitled to claim total compensation of Rs. 23,76,000/- (Rs.18,00,000 + Rs.5,76,000), apart from claiming compensation in other heads such as loss of love and affection, funeral expenses, etc.*

22. *The petitioner has already received a sum of Rs.1 lakh from the Chief Minister's Relief Fund in the year 2005. After deducting the said amount, petitioner is entitled to get more than the amount claimed in this writ petition. The petitioner has claimed Rs.22 lakhs from the second respondent on 16.10.2006 by sending representation through RPAD and no reply was given by the second respondent. Hence the petitioner is eligible to get interest, at least from the date of demand i.e, from 16.10.2006 and the appropriate interest would be 6% per annum. By such calculation, the interest for Rs.22 lakhs for five years and six months comes to Rs.7.26 lakhs.*



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23. *In fine, the writ petition is allowed. The second respondent is directed to pay a sum of Rs.29.26 lakhs (Rupees Twenty Nine Lakhs and Twenty Six Thousands) (i.e, Rs.22 lakhs compensation and Rs.7.26 lakhs as interest), within a period of four weeks from the date of receipt of copy of this order. No costs."*

13.This order has also been confirmed by the Division Bench of this Court and in WA 1199 of 2012, dated 17.11.2016, reported in (2017) 1 MLJ 650 and the Division bench has further discussed the issue and held as under:

35. *Sir Percy Winfield in his book "Province of the Law of Tort", has explained tort as follows:*

"Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards person generally and its breach is redressable by an action for un-liquidated damages."

36. *On the aspect of breach of duty, Salmond in his Treatise on Torts, 11th Edition, at Page 604, summarises the law as follows:*

"The breach of a duty created by statute, if it results in damage to an individual, is prima facie a tort, for which an action for damages will lie at his suit. The question, however, is in every case one as to the intention of the legislature in creating the duty, and no action for damages will lie if, on the true construction of the



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statute, the intention is that some other remedy, civil or criminal, shall be the only one available. If the statutory duty involves the notion of taking care not to injure, the tort is now spoken of as 'statutory negligence'.

At page 608, Salmond further observed as follows:

"Indeed, it is impossible to lay down any definite principle. The general rule is that 'where an Act creates an obligation and enforces the performance in a specific manner performance cannot be enforced in any other manner.' But in the words of Lord Macnaghten 'whether the general rule is to prevail, or an exception to the general rule is to be admitted, must depend on the scope and language of the Act which creates the obligation and on consideration of policy and convenience'. The result is that the law depends on the interpretation which the courts (with or without the aid of the principles of construction which are now falling into some disfavour) may place on any particular statute. To a person unversed in the science, or art, of legislation it may well seem strange that Parliament has not by now made it a rule to state explicitly what its intention is in a matter which is often of no little importance instead of leaving it to the courts to discover; by a careful examination and analysis of what is expressly said, what that intention may be supposed probably to be."

37. Summarising from the judgments, extracted supra and texts, 'Act of God' means, an unexpected occurrence of nature, such as severe gale, snowstorms, hurricanes, cyclones and the like. But every



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unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. 'Act of God' provides no excuse, unless so it is unexpected that no reasonable human foresight would be presumed to anticipate the occurrence having regard to the conditions of time and place known to be prevailing at. An 'Act of God' is an occurrence, which no human foresight can provide against and of which human prudence is bound to recognise the possibility. 'Act of God' is an inevitable accident, which happens not only without the concurrence of the will of the man, but in spite of all efforts, on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. An 'Act of God' is an inevitable or unavoidable accident without the intervention of man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. It should be an incident, due to an unexpected operation of natural forces free from human intervention, which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it. It should be a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. If the act in its origin either in the whole or in part is due to the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case for 'Act of God'.



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38. In the light of the above discussion, when the officials of the appellant Corporation have failed to discharge their duties enjoined on them, by Chennai City Municipal Corporation Act, 1919, in Section 259 of the Act, which mandates the Corporation to cut and remove dangerous trees, even if they were standing in a private place and when one of them fell on a car, resulting in loss of the precious life, prima facie, it is a tort, for which, an action for damages would lie. Act of God is not a defence to breach of duty or failure to perform statutory duties. As rightly observed by writ court, had the officials of the appellant Corporation, cut and removed the old, worn out and dangerous trees and performed their statutory duties, the accident would not have occurred.

39. When there is a failure on the part of the Corporation to discharge its statutory duties, it is not open to them to contend that the second respondent, who lost his parents at the young age, on account of such failure, to move the civil court, when courts have already held that the victim is entitled to public law remedy.

14. It is relevant to discuss the relevant provisions under the Tamil Nadu Urban Local Bodies Act, 1998 and the position of law prior to that Act came into force. Anyone who affix, inscribe or exhibit an advertisement in a open place without written consent of the owner, occupier or a person in management of the property are



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liable to be punished for an imprisonment for a term upto three years as per Section 4 of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. Section 107 B of the District Municipalities Act, 1920 prohibits erection or display of advertisement made without any written permission from the Executive authority. Section 107 D of the District Municipalities Act, 1920 imposes a liability on the owner or occupant of the land, building, wall, hoarding or structure, where advertisement is located and the Executive Authority is having a power to remove any unauthorised advertisement as per Section 107E. Section 285 I of the Act imposes penalties for contravention of the provisions of the Act and the penalty can be imprisonment for upto 3 years or a fine upto Rs.10,000/- or both. Sections 157 to 162 of the Madurai City Corporation Act, 1971 is similar to that of Tamil Nadu District Municipalities Act, 1920 . The only difference is that the authority under the Madurai City Corporation Act, 1971 is the Commissioner, whereas, under the Tamil Nadu District Municipalities Act, 1920, it is the Executive Authority.



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15. Though there are provisions under the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, Tamil Nadu District Municipalities Act, 1920 and the Madurai City Corporation Act, 1971 as stated supra, the officials have not implemented the same and failed to take appropriate actions as against the illegally erected advertisement board and the posters under the relevant provisions of the Act. The entire Madurai City is covered by hoardings. The people, who are interested in exhibiting their face use their functions, like Marriage, ear boring ceremony and puberty functions etc., to print posters and exhibits hoardings. Apart from these functions, political parties are also exhibiting their presence by fixing boards and disfiguring the walls of the Government buildings. It is very sorry state of affairs that the Corporation as well as the District Administration, who are responsible to take appropriate action as per the relevant provisions of the Act are mute spectators for the same. Whenever any precious life is lost on account of these hoardings and advertisement boards, the authorities have come



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forward to take action for some time and in this case, it is very unfortunate to state that the Corporation, who is responsible for the cause of the death has not bothered either to correct their mistake or to pay compensation to the deceased family for the past 14 years and also mislead this Court by shifting the responsibility on the Archeology Department.

16.The Government has replaced the Tamil Nadu District Municipalities Act 1920 and the Municipal Corporation Acts at Chennai, Madurai, Coimbatore, Trichy, Tirunelveli and Salem through the Tamil Nadu Urban Local Bodies Act, 1998 (T.N. Act 9 of 1999). This Act has been enacted to bring all the Urban Local Bodies, namely, Town Panchayat, Municipal Councils and Municipal Corporations in the state of Tamil Nadu under one comprehensive Act. As per Section 117(O) of the Tamil Nadu Urban Local Bodies Act, which came into effect on 13.04.2023, all the unauthorised advertisement boards, banners, digital boards erected without licence or without any permission shall be confiscated and



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removed by the Commissioner without giving any notice and to recover the cost of removal from the person, who has erected the unauthorised hoarding. The said provision is extracted as under:-

117-O. Removal of unauthorized hoarding, digital banner or placard.-

Any hoarding erected without licence or any digital banner or placard erected without permission shall be confiscated and removed by the Commissioner without giving any notice and recover the cost of removal from the person who has erected the unauthorized hoarding, digital banner or placard, as an arrear of land revenue.

17. If any hoarding or any digital banners are retained after expiry of the licence or the period of permission, a notice has to be issued for removing the same and a duty has been cast upon the Commissioner to remove the same and to recover the cost of removal as per Section 117(P) of the Urban Local Bodies Act 1988 and the same is extracted as under:-

17-O. Removal of unauthorized hoarding, digital banner or placard.-



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(1) Where any hoarding or digital banner or placard is retained after the expiry of the licence or the period of permission, as the case may be, or erected contrary to the conditions of the licence or the permission, as the case may be, the Commissioner may, by notice in writing, require the licensee or the permit holder to remove such hoarding or digital banner or placard within such time as may be prescribed.

(2) Where the hoarding or digital banner or placard is not removed within the time specified in the notice, the Commissioner shall, without further notice, remove the same and recover the cost of removal from the person concerned as an arrear of land revenue.

18. Thiru. Shiv Das Meena, the Hon'ble Chief Secretary to Government when he was the Secretary to the Municipal Administration and water supply department, has issued a DO letter No.5392/MC2/2023 -3, dated 02.06.2023 to the Director of Municipal Administration and the same is extracted as under:-



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D.O.Letter No.5392/MC.2/2023-3, dated 02.06.2023

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Dear, Thiru.Ponniah,

Sub: Hoardings – Strict Compliance of provisions of the
Tamil Nadu Urban Local Bodies Act and Rules –
Instructions – issued.

I invite your attention to the relevant provisions relating to regulation of erection of hoardings contained in the Tamil Nadu Urban Local Bodies Act, 1998 as amended by Act 35 of 2022 and the Tamil Nadu Urban Local Bodies Rules, 2023, wherein, the Commissioners of the Urban Local Bodies (ULBs) are empowered for enforcement of the regulation of hoardings, digital banners and placards. Even after repeated instructions give by the Government, many hoardings can be seen along the roads and on buildings. Several of these hoardings are apparently unsafe and poses danger to the public safety.

2.In order to regulate the mushrooming growth of hoardings, I request you to take the following action immediately:

- i. To take census of hoardings in all Urban Local Bodies and launch a drive to remove unauthorized hoardings;
- ii. All unauthorized hoardings and hoardings posing risk to public life and safety have to be removed immediately;
- iii. Take penal action agaist the owner of unauthorized hoardings as per the provisions of the Act.
- iv. The validity of the licence of the existing hoardings to be reviewed in accordance to the provisions of the Act.

3.I also request you to immediately convene a meeting with all Regional Directors of Municipal Administration and Commissioners of Corporations and Municipalities and instruct them to strictly enforce the statutory provisions relating to hoardings. They may also be instructed to remove the unauthorized hoardings summarily.

4.In this regard, a review format and detailed guidelines to regulate hoardings in Urban Local Bodies are enclosed for your ready reference.



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5. Proper awareness regarding the provisions of the Act and Rules, governing hoardings should be created among the public and advertisement companies covering the safety aspects and process of obtaining licence for such hoardings, digital banners and placards. Awareness should also be created about the penal provisions in case of violating the provisions of the Act.

6. You are also requested to launch a special drive in all Corporations and Municipalities to identify and remove unauthorized hoardings and hoardings posing risk to the public life and safety. Removal of unauthorized hoardings should also be a part of the "clean city campaign" organized on every second and fourth Saturday of the month.

7. I also request you to send an action taken report in this regard to Government within a week's time."

19. Tamil Nadu Urban Local Bodies Act came into effect with effect from 13.04.2023. The above DO letter was issued on 02.06.2023. Even thereafter, it appears that the scenario has not been changed. The hoardings/banners on the road margins in the entire Madurai Corporation is still remain unchanged. Though the responsibility and accountability has been fixed on the jurisdiction junior Engineer and the Assistant Engineer of the area, where hoardings are fixed, the concerned officials have not taken any action. The officials who are expected to take action is not having any courage to take action . This is how the administration is



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functioning. It is very unfortunate to state that the relevant Act and Rules are in statute alone and the implementing authorities are not bothering to implement the same. A common man like the petitioner, who had affected are waiting for justice for decades.

20. Even in this case, the petitioner, a poor lorry driver, who lost his son in the year 2011 was made to file a writ petition for compensation and this writ petition could not be disposed of for want of reply from the third respondent. The counsel, who represented the third respondent has also mislead the Court and dragged the proceedings for a long time by projecting that the Advertisement Board was of the Archeology Department, which caused the death. In view of the representation made on behalf of the third respondent, this Court has also impleaded the Archeology Department and the Archeology Department was also made to file a counter affidavit before this Court. The District Collector was made to conduct an enquiry by spending her precious time.



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21. In view of the foregoing reasons and discussions, this Court is inclined to allow this writ petition with the following directions:-

- i. The petitioner is entitled for a compensation of a sum of Rs.20,00,000/-. The petitioner has also filed a calculation memo by calculating the compensation as per the Motor Vehicles Act and made a demand of Rs.22,00,000/-, which is as under:-

The monthly income of the deceased was arrived as per the ratio laid down by the Honourable Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 case.

Notional Income as fixed by the
Hon'ble Supreme Court of India X Cost of Inflation Index
for the year 2009-2010

Cost of Inflation index for the year 2007-2008.

$$\frac{6500 \times 148}{129} = \text{Rs.}7457.00$$

Rs.7457.00 has been taken as a monthly income of the deceased petitioner's son.

Rs.7457 + Rs.2982 (40% towards future prospectus) = Rs.10,439/-

Rs.10,439 x 12 months x 18 years (age of the deceased at the time of death)

Total compensation claimed is **Rs.22,54,824/-**



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- ii. The third respondent Corporation is directed to pay the compensation of Rs.20,00,000/- to the petitioner within a period of three months from the date of receipt of a copy of this order.
- iii. Since the fifth respondent/ Archeology Department has been unnecessarily added as a party to this writ petition and the District Collector was also made to conduct an enquiry to ascertain as to the whether the advertisement Board belong to the Madurai Corporation or Archeology Department, the third respondent is directed to pay a sum of Rs.10,000/- each to the second and fifth respondents.
- iv. The third respondent shall take necessary action as against the erring officials, who failed to implement the provisions under the Tamil Nadu Urban Local Bodies Act under Section 117 (O) and 117(P) of the Act. The commissioner has to review the same periodically along with the officials once in every month.



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22.With the above directions, this writ petition is allowed. No costs.

30.01.2024

NCC: Yes/No
Index:Yes/No
Internet:Yes
vrn

To

- 1.The Secretary to the Government,
Home Department,
Secretariate,
Chennai.
- 2.The District Collector,
Office of the Collectorate,
Madurai.
- 3.The Commissioner,
Madurai Corporation,
Madurai.
- 4.The Tahsildar,
Madurai South,
Taluk Office Collectorate Building,
Madurai.
- 5.The Assistant Director,
Archeology Department,
Mahal Building, Madurai.



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B.PUGALENDHI, J.

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Pre-delivery Order made in
W.P(MD)No.5622 of 2014

30.01.2024