



W.A(MD)No.1302 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

**W.A(MD)No.1302 of 2016
and
C.M.P(MD)Nos.9776, 9018 & 11727 of 2016
and
C.M.P(MD)No.1032 of 2019**

1.The Principal & Correspondent,
Rathish English Matric School,
Main Road, Parappadi,
Nanguneri Taluk,
Tirunelveli District.

2.Jacob Pandian,
Rathish English Matric Shool,
Main Road, Parappadi,
Nanguneri Taluk,
Tirunelveli District.

...Respondents 5 & 6/
Appellants

Vs.

1.Minor.K.Priyadarshini,
Represented by her mother and next friend,
K.Venkateswari,
W/o.T.Kannapiran,
D.No.19, 20, krishnankoil Keelatheru,



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Koilpathu, Kalakkad,
Nanguneri Taluk,
Tirunelveli District.

...Writ Petitioner/
1st Respondent

2.The Director of Elementary Education,
Chennai.

3.The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.

4.The District Collector,
Tirunelveli District, Tirunelveli.

5.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

6.Freeda,
Teacher,
Rathish English Matric School,
Main Road, Parappadi,
Nanguneri Taluk
Tirunelveli District.

7.The Chief Secretary,
State of Tamil Nadu,
Fort Saint George,
Chennai-600 009.

....Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P(MD)No.12061 of 2012, dated 04.07.2016.



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For appellants : Mr.M.Suresh Kumar
Additional Government Pleader

For R1 : Mr.G.Prabhu Rajadurai
For R2 to R5 & R7 : Mr.D.Sadiq Raja

JUDGMENT

(Order of the Court was made by K.K. RAMAKRISHNAN,J.)

This Intra Court appeal is directed against the order passed by the writ Court, dated 04.07.2016 in W.P(MD)No.12061 of 2012.

2. The respondents 5 & 6 filed this writ appeal challenging the Writ Court Order passed in W.P(MD)No.12061 of 2012, dated 04.07.2016. The first appellant is running a School, namely, Rathish English Matric School in Parappadi, Nanguneri Taluk, Tirunelveli District. In the said school, when the writ petitioner was studying LKG, on 01.03.2012 she suffered injury in her right eye and hence, she was admitted in the Aravind Eye Hospital, Tirunelveli, and the same was not informed by the school authorities, but later the first respondent's mother came to know that and enquired about the Teacher of the School and they told that when she was playing, she fell down and sustained injury. But the



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daughter, namely, the first respondent told that the Teacher namely 6th respondent Freeda had beaten her with stick and so she sustained injury. Thereafter, the appellants pacified them with undertaking that they would bear the entire expenses. Thereafter, they refused to pay the amount and hence, the First Information Report was registered in Cr.No.38 of 2012 against the 6th respondent under Section 325 IPC. Due to the injury, the first respondent's right eye vision blurred and the nerves also were very much affected, therefore, she had undergone two surgeries and also taking continuous treatment till date. Hence, the parents of the first respondent sent a representation to the authorities to give compensation and thereafter, there was no reply. Therefore, she filed the writ petition seeking compensation of Rs.10,00,000/-.

3. The appellants filed counter denying the allegations that the first respondent sustained injury as a result of beating by the class teacher. They stated that she accidentally fell down and the sixth respondent had not beaten any children. The sixth respondent in order to control the children merely had a stick and had not beaten the children. Hence, she sustained accidental injury and therefore, they are not liable to pay compensation.



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4. The respondents 1 & 2 filed counter supporting the counter affidavit filed by the School Authorities and seeks for dismissal of the writ petition.

5. After the perusal of the counter affidavit, the Writ Court appointed the Superintendent of Police, Tirunelveli to submit the enquiry report relating to the injury sustained by the victim. The Superintendent of Police conducted a detailed enquiry and found that the victim was beaten by a stick in her right eye by the sixth respondent. Hence, the Writ Court, after considering the other materials, counter affidavit filed by the School authorities, allowed the writ petition by granting compensation of Rs.7,00,000/- with 12% interest per annum from the date of filing of the petition. The writ Court also directed the District Elementary Educational Officer to pay a cost of Rs.1,00,000/- for a biased report filed in support of the school authorities.

6. Challenging the same, the school authorities namely, the appellants filed the writ appeal.



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7. The learned counsel for the appellants would submit that the writ petition is not maintainable on the ground that this is an unaided school. He further submitted that there is a disputed question of fact relating to the incident namely, according to the sixth respondent and the appellants, the victim sustained injury at the time of getting into the van and there is no wrong doing on the part of the sixth respondent.

8. Another view as per the document is that the teacher had beaten the victim and hence, the victim sustained injury. In view of the two contra reports, there is a dispute relating to the injury sustained by the first respondent, hence, he seeks for dismissal of the writ petition since the writ petition involved the question of disputed fact.

9. The learned counsel for the first respondent/victim submitted that since the appellants are running a school and as per Article 21(A) of the Constitution of India, every child has a right of education up to 8th standard and the school was imparting education and hence, they are claiming compensation under Article 226 of the Constitution of India. The learned counsel for the first respondent



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submitted that there was no disputed question of fact involved in this case. In the pleading itself, it is stated that the injured sustained injury in the school premises and hence, they are responsible for the said injuries. The respondents have not explained the injury and hence, they are liable to pay compensation.

10. The manner of the incident is also to be taken into consideration that the first appellant was not informed about the injury sustained by the victim girl till the first appellant approached the school authority and seeing that the child was not available in the school van. The said circumstances also are to be taken into consideration to fix the liability by applying the principles of *res ipso facto*.

11. The learned Additional Government Pleader appearing for the respondents 2 to 5 and 7 submitted that as per the order of this Court, the District Elementary Educational Officer has already paid the cost of Rs.1,00,000/- and the Superintendent of Police conducted an enquiry and filed the correct report and there was no dispute relating to the beating by the sixth respondent in the school.



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12. This Court considered the rival submissions made by both sides and also the pleadings, impugned judgement of the learned Single Judge and the documents filed by both parties.

13. Admittedly, the first respondent was studying in LKG and sustained injury in the school premises. It is the version of the sixth respondent in the writ petition and the appellant that the sixth respondent therein had not at all beaten any students and in order to regulate the students to get into the school van, she held the stick in her hand and at the time, when the victim was attempted to rush into the van, she herself hit the stick held by the sixth respondent therein and sustained injury.

14. According to the Superintendent of Police, who had conducted an enquiry, the sixth respondent therein had beaten the student and hence, the victim sustained injury. The Superintendent of Police is an independent officer. He was appointed by this Court to conduct an unbiased enquiry. He filed the report stating that the sixth respondent therein is responsible for the incident as the sixth respondent had beaten the child and the child sustained injury in her right eye.



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The said report was not denied by the sixth respondent therein and the school management. The Superintendent of Police also submitted all the report of the witnesses examined from the school and out of the school. In the said circumstances, the pleadings of the sixth respondent therein, that the sixth respondent therein did not beat the student, is not acceptable.

15. In view of the said available records and without any specific denial on the part of the school authorities relating to the report submitted by the Superintendent of Police, this Court finds that there is no disputed fact about beating in the school premises and hence, the child sustained injury in the school premises at the hands of the sixth respondent. Even otherwise, the child sustained injury inside the school premises and it is the duty of the school authorities to take care as a parents.

16. Guru is entrusted with the statutory duty of a parent to take care of the child, more particularly, LKG studying child. In this aspect, it is relevant to extract here the Judgment of the Honourable Supreme Court in the case of *Avinash Nagra v. Navodaya Vidyalaya Samiti*, reported in (1997) 2 SCC 534 at



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It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

17.As per Section 106 of the Indian Evidence Act, 1872, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Apart from that, the negligence on the part of the school authorities is presumed from holding the sticks by the sixth respondent at the time of the occurrence. Holding the stick at the time of boarding the children in the school van itself is a circumstance to presume that the school authorities were not handling the situation in a proper manner.

18. It is the duty of the authorities to control the LKG studying children and holding the stick to control the students cannot be tolerated and also against the Act namely the Right of Education Act and also the Juvenile Justice Act.

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19. In the said circumstances, once the injury is caused inside the school premises, it is the duty of the school authorities to explain to the satisfaction of the Court that the injury is not caused by beating by the sixth respondent and the injury was not caused by any of the authorities. Her stand is that the same was accident, which also is covered under the tortious liability to fix the negligence on the school authorities. The accident happened due to the carelessness and the negligence act of the school authorities. Hence, viewed from all angles, the victim sustained injury due to the negligence and careless act of the school authorities, hence, the appellants are liable to pay the compensation.

20. The issue of maintainability of writ petition against the unaided school is concerned, the same was settled by the Hon'ble Supreme Court in number of cases. The school was discharging the duty by imparting the education. As per the judgment of the Supreme Court in **MARWARI BALIKA VIDYALAYA VS. ASHA SRIVASTAVA & OTHERS** reported in **2020(14) SCC 449**, the writ petition is maintainable against the unaided school. Hence, in view of the above law, the contention of the first appellant that the writ petition is not maintainable



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against the unaided school, is not acceptable. There was no contrary fact in the record that the child did not sustain injury inside the school. The injury sustained was inside the school and hence, the school authorities are liable to explain the injury sustained by the child.

21.It is the pleadings of the school authorities that the teacher was holding the stick at the time of boarding the children in the van. Hence, there was no disputed question of fact and the incident itself speaks the negligence on the part of the school authorities. Even otherwise, as held by the Supreme Court of India in the case in **2020(13) SCC 285** relating to the claiming of compensation for a 5 years child who lost her right eye held that alternative remedy is not a bar to entertain the writ petition under Article 226 of Constitution of India. Based on the report from the Superintendent of Police, the writ Court rendered a finding that the school authorities are responsible for the accident and awarded compensation of Rs.7,00,000/- with interest at the rate of 12% per annum.

22.While considering the submission of the learned counsel for the appellants, for reduction of the interest, the learned counsel for the first



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respondent/claimant submitted that as on date the parents of the victim have incurred more than Rs.7,00,000/- and the doctors advised for taking continuous treatment on account of the injuries affecting the optic nerves, but the appellants school authorities pleaded that after the incident, they closed the school and not running the school and they are unable to pay such huge interest.

23. Considering the facts and circumstances of the case and also considering the fact that now the school is not functioning, we are inclined to reduce the interest from 12% p.a., to 6% p.a. The appellants school authorities are directed to pay the amount as per the order of this Court in the writ appeal.

24. The appellants are directed to calculate the amount of Rs.7,00,000/- at the rate of 6% and directed to pay the remaining amount within a period of two months from the date of receipt of a copy of this order. It is made clear that the amount already deposited before this Court is excluded from the further payment.

25. With these modification, the writ appeal is partly allowed. The victim was represented by his mother in the writ petition and her mother is directed to



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withdraw a sum of Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand Only) deposited before the Bank with accrued interest. The bank authorities are directed to disburse the same without raising any query from the date of submitting the request. No costs. Consequently, connected miscellaneous petitions are closed.

[V.B.S.,J.] [K.K.R.K.,J.]
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Index : Yes / No
Internet : Yes / No
am/vsg



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To:

- 1.The Director of Elementary Education,
Chennai.
- 2.The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.
- 3.The District Collector,
Tirunelveli District, Tirunelveli.
- 4.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 5.The Chief Secretary,
State of Tamil Nadu,
Fort Saint George,
Chennai-600 009.
- 6.The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

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JUDGMENT MADE IN
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