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W.P.No.1601 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.1601 of 2024

S.Venkatacalam

... Petitioner

Vs.

1.The Chairman,
Ministry of Road Transport and Highways,
Plot No.G5 and G6, Sector 10,
Dwarka,
New Delhi – 110 075.

2.The Regional Officer,
National Highways Authority of India,
Ministry of Road, Transport and Highways,
Sri Tower, 3rd Floor, DP-34 (SP),
Industrial Estate,
Guindy, Chennai – 600 034.

3.The Project Director,
National Highways Authority of India,
Door No.212-3/D-3-1, Sri Nagar Colony,
Narsothipatti,
Salem – 636 004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents herein to consider the petitioner's representation dated 10.11.2023 given to the respondents and to pay compensation on merits.



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For Petitioner : Mr.K.Mohan
For R1 : Ms.P.J.Anitha
Central Government Standing Counsel
For R2 and R3 : Mrs.S.R.Sumathy

ORDER

This petitioner seeks a direction to the respondents to consider the petitioner's representation dated 10.11.2023 and to pay compensation on merits.

2.It is the case of the petitioner that, while he was proceeding in his Electric Motor Cycle from Lakshmi Nagar to Chithode on Salem-Kochi Highway No.544, suddenly a crater developed on the road for about 10 feet depth, as a result of which, he lost control of his vehicle and fell down into the hole and sustained grievous injuries all over his body and also suffered physical disability and got admitted in the KMCH Hospital at Erode and was treated as in-patient for three days and spent Rs.5,00,000/- towards medical expenses. It is the contention of the petitioner that the accident was due to the poor maintenance of National Highway No.544 by the respondents and therefore, they are liable to pay compensation to him for his



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physical disability and loss of income. In this regard, he has submitted a representation before the respondents dated 10.11.2023 to pay compensation. Since the same has not been considered, the present writ petition has been filed by the petitioner.

3.A counter affidavit has been filed by the 3rd respondent stating that concessionaire of the respondents, namely M/s.Kumarapalayam Tollways Ltd., Tollplaza, Kambuliyampatti Village, Vijayamangalam Post, Perundurai Taluk, Erode District – 638 056, and its Insurance Company have to be impleaded as parties to this writ petition, as the concessionaire has taken the Contractors All Risk Insurance Policy. It is further stated that a writ petition seeking compensation on tortious liability is not maintainable, as the negligence has to be established by letting in oral and documentary evidence before the Civil Court, as per the dictum of the Hon'ble Supreme Court in ***Chairman, Grid Corporation of Orissa Ltd. and others v. Sukamani Das and another*** reported in (1999) 7 SCC 298, and similar view has been taken by the Hon'ble Supreme Court in ***SDO, Grid Corporation of Orissa Ltd. v. Timudu Oram*** reported in (2005) 6 SCC 156.



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4. From the nature of the claim made by the petitioner, I am of the view that the petitioner is claiming damages on account of the negligence of the respondents. When the petitioner is trying to establish the tort or negligence, the same requires oral and documentary evidence. The nature of disability suffered, the expenses incurred by the petitioner, and other factual aspects, have to be proved in the manner known to law. According to the petitioner, while he was riding his motor cycle, he fell in a pit which had suddenly surfaced at once in the Highways. Since the said fact has not been disputed by the respondents, the petitioner is liable to be compensated. However, the negligence of the respondents and the quantum of compensation have to be established by letting in oral and documentary evidence. Further, the concessionaire of National Highways Authority of India and its Insurance Company, have not been impleaded as parties. Without making them as parties, as a matter of right, compensation cannot be claimed on the basis of mere representation, before this Court, that too, in a writ petition.



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5. Such being the position, the petitioner is at liberty to file an appropriate claim petition before the Motor Accident Claims Tribunal or file a suit before the Civil Court, by impleading all the necessary parties, including the concessionaire of National Highways Authority of India and its Insurance Company, who are instrumental and responsible for laying and maintaining the road in that area, apart from adding the respondents herein as parties. The period spent in this writ petition shall be excluded while calculating the period of limitation, considering the fact that the petitioner was *bona fide* pursuing his remedy in the Writ Court.

6. Accordingly, this writ petition is disposed of. No costs.

02.12.2025

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No



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N. SATHISH KUMAR, J.

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