



W.P.No.3759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2025

PRONOUNCED ON : 29.01.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.3759 of 2022

Sivakumar

... Petitioner

VS.

- 1.The Government of Tamil Nadu
Rep by its Chief Secretary
Secretariat
Chennai-600005
- 2.The Chief Engineer,
Public Works Department
Chepauk, Triplicane
Chennai-600005
- 3.The District Collector
Office of the Collector
Mannar Rajagopala,
Thondaiman Palace
Pudukottai-622005
- 4.The General Manager
Southern Railways HQ, George Town,
Chennai-600003



W.P.No.3759 of 2022

5. The Divisional Railway Manager
Southern Railway Madurai Division
Madurai, Tamil Nadu-625016

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to pay compensation amounting to Rs. 5 Crores for the loss of life on account of their negligence and to take appropriate action against all those erring officials.

For Petitioner : M/s.V.Srimathi

For R1 to R3 : M/s.M.Jayanthi
Additional Government Pleader

For R4 and R5 : Mr.A.Kumaraguru
Senior Panel Counsel

ORDER

The Writ Petition is filed seeking a direction to the respondents to pay compensation of Rs.5 Crores for the death of petitioner's wife-Dr.P.Sathiya due to stagnation of water in the railway underpass.



W.P.No.3759 of 2022

2. It is the case of the petitioner that he is a native of Thudaiyur, Pudhukottai. The petitioner is a software engineer working in Bangalore and his wife-Dr.P.Sathiya was a gynecologist, who was working in Government Hospital, Hosur at the relevant point of time. During September, 2021, the petitioner's wife-Dr.P.Sathiya travelled to Pudhukottai along with her children to meet the petitioner's mother. For the purpose of purchasing necessities, the petitioner's mother and his wife-Dr.P.Sathiya used to visit nearby town Pudhukottai, which is 18 kilometers away. Necessarily, the commuters have to go through railway underground subway near Amma Chathuram.

3. It is the case of the petitioner that his wife deceased Dr.P.Sathiya and his mother travelled from Thudaiyur to Pudhukottai in his Maruthi Alto Car traversing the underground subway. When the victim crossed the subway on 17.09.2021 at about 6.00 p.m., on her way to Pudhukottai, there was no water stagnation. While returning to the same spot at about 7.00 p.m., the subway was inundated with water and car driven by victim got entangled in the stagnant water in the subway. As the flood water entered the car fully, petitioner's wife died due to asphyxiation.



W.P.No.3759 of 2022

4. It is averred by the petitioner that it is the responsibility of the respondents to keep underpass free from water and the death of the petitioner's wife was due to the fault of Public Works Department, Municipal Bodies, Railways and other companies responsible for the construction of subway. Therefore, the petitioner has filed this writ petition seeking compensation for the death of his wife as mentioned above.

5. In support of her contention, the learned counsel relied on the following judgments:-

(i) ***Rudul Shah vs. State of Bihar and another*** reported in (1983) 4 SCC 141.

(ii) ***S.Vendantacharya and another vs. Highways Department of South Arcot and others*** reported in (1987) 3 SCC 400.

(iii) ***Kumari vs. State of Tamil Nadu and others*** reported in (1992) 2 SCC 223.



W.P.No.3759 of 2022

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(iv) ***Shakuntaladevi vs. Delhi Electric Supply Undertaking and others***

reported in (1995) 2 SCC 369.

(v) ***G.Lakshmi vs. State of Tamil Nadu*** reported in (2008) 5 MLJ 533.

(vi) ***S.Nilavathi and others vs. The Union of India and others***

(W.P.(MD).No.9762 of 2018)

6. The 3rd respondent filed counter affidavit stating that on the fateful day, there was heavy rain and as a consequence, the subway got inundated and it was not safe to use the inundated subway. It is stated that even as per the admitted case of the petitioner at 6.00 p.m., there was no water in the subway and at 7.00 p.m., there was full of water and hence, there is no sufficient time for the respondents to drain the water in short duration. It is also stated that inundation of subways are common phenomena and the victim could have taken the alternative route to reach her home by avoiding the inundated subway. It is also stated that the victim is a Government Servant entitled to the benefits of Death-cum-Retirement Gratuity, Family Pension, Accumulated Leave Salary and other benefits and therefore, the prayer for compensation is not maintainable.



7. The respondents 4 and 5 filed counter affidavit stating that there was heavy rain on the fateful day. It is stated that at 6.00 p.m., there was only minor drizzling and there was no water stagnation in the subway. The victim safely used the very same subway at about 6.00 p.m. Thereafter, there was a sudden down pour to the extent of 90mm within a short period of 1 ½ hours. Therefore, suddenly, the subway got inundated and hence, inundation in the subway was due to sudden rainfall. It is also stated that the culvert, which was constructed parallel to the retaining wall of subway structure for facilitating draining of water was blocked by dumping of earth by the adjacent land owner namely one Ramamurthy and the same resulted in flow of rain water into subway and caused excessive stagnation. Therefore, the respondents 4 and 5 claimed that stagnation of rain water was not due to their negligence and failure to drain the water and sudden stagnation of rain water was only due to unexpected down pour and the covering of the culvert by the nearby land owner.

8. It is settled law that the writ petition for payment of compensation for any injury is not normally maintainable before this Court unless the liability is undisputed.



W.P.No.3759 of 2022

9. A perusal of the FIR given by the petitioner as well as averment in the affidavit would make it clear that at 6.00 p.m., on the fateful day, there was no flooding of subway and the victim crossed the same without any difficulty. On return direction, at about 7.00 p.m., there was inundation of subway due to rain and notwithstanding the inundation of subway, the victim drove the car through the subway and got entangled in the water.

10. It is specifically averred by the respondents 4 and 5 in their counter affidavit that at 6.00 p.m., there was only drizzling and within an hour there was heavy down pour to the extent of 90mm and the same caused inundation in the subway. Further, it is also pleaded that nearby land owners dumped the earth on the culvert constructed for draining of water from the subway structure and the same resulted in heavy stagnation in the subway.

11. A perusal of the affidavit would also indicate that water in the subway quickly reached the dangerous level engulfing the car.

12. The person driving the car is also expected to take a rational decision while negotiating the inundated water, especially in the subway



W.P.No.3759 of 2022

structure. Because in the subway structure, the level will go down and the same will be to its maximum underneath the railway bridge. The person driving the car is expected to know that in case of stagnation of water in the subway, the water level will raise when he/she go towards the railway bridge and then it will recede when they travel away from the railway bridge. Therefore, merely because there is stagnation in the subway, we cannot jump to a conclusion that the respondents are solely responsible for the death of the petitioner.

13. It is also seen that the doors of the car got jammed and therefore, the petitioner could not come out. It is also stated that there was heavy down pour within one hour and hence, the intervention of *force majeure* should also be taken into consideration. The pleadings also indicate that there was dumping of earth by nearby land owner on the culvert meant for draining of water from subway structure. Therefore, from the pleadings, we are not in a position to come to a definite conclusion, the respondents are solely responsible for the inundation of subway and death of petitioner's wife. Who is responsible for the death of petitioner's wife and whether her own negligence contributed to her death or the respondents are solely responsible for inundation etc., are all matters for evidence.



W.P.No.3759 of 2022

14. The effect of *force majeure* (i.e., heavy down pour within one hour) should also be taken into consideration. Therefore, in the writ proceedings, this Court cannot conveniently decide the question of negligence. The parties are expected to lead evidence in order to take a decision on the negligence aspect. Hence, this Court is not inclined to entertain this writ petition filed by the petitioner in view of disputed question of fact with regard to the negligence aspect.

15. Turning to the case laws relied on by the learned counsel for the petitioner, the first case law relied on by the petitioner is relating to compensation for illegal detention, hence, it is not applicable to the fact situation.

16. The second judgment relied on by the petitioner arising out of a decree passed in a suit and the compensation amount was Rs.14,000/- only. The same cannot be a precedent in a writ petition, wherein disputed question of fact cannot be gone into.



W.P.No.3759 of 2022

17. In the third judgment relied on by the petitioner, the sewerage tank was kept open, therefore, the compensation was granted in writ proceedings. Here, in view of the disputed facts involved, the above mentioned case law cannot be made applicable.

18. In ***Shakuntala Devi*** case relied on by the petitioner, there was a death occurred due to electrocution. The Apex Court invoked its power under Article 142 of the Constitution of India and granted compensation taking into consideration the facts of that case. Such power is not available to this Court.

19. In ***G.Lakshmi*** case relied on by the petitioner, victim got drowned in a flooded drain, which was kept open without parapet walls. In view of the same, negligence was fixed on the respondent therein and a sum of Rs.1,00,000/- was awarded as compensation. In the case on hand, there are disputed facts which has to be decided in a full fledged trial.

20. In ***Nilavathi*** case relied on by the petitioner an old jamun tree on the sides of National Highway fell down on the tempo vehicle and as a



W.P.No.3759 of 2022

consequence, petitioner's son died. This Court said that the failure to remove old jamun trees from the public road would amount to negligence on the part of the respondent therein, who was responsible for maintenance of highway. In the said case, it was also noted by the Court that the felling of branch of the tree was not due to heavy wind or rain. In the case on hand, as mentioned earlier there was a heavy down pour on the fateful day within a short period of one hour. Hence, there is an intervention of *force majeure* and hence, the said case law cannot be made applicable to the facts of the present case. In view of the same, the citations relied on by the petitioner are not applicable to the facts of the present case where there is intervention of *force majeure*.

21. Accordingly, the Writ Petition stands dismissed with liberty to the petitioner to file civil suit for recovery of compensation for the death of his wife, if so advised.

22. Any observation made by this Court while disposing the writ petition will not affect the case of the petitioner in a regularly instituted suit. If any such suit is filed by the petitioner, the same shall be disposed of on its



W.P.No.3759 of 2022

own merits, without referring to any observation made by this Court in this writ petition. The petitioner is entitled to exclude the time during which the writ petition has been pending before this Court namely 14.02.2022 to the date of receipt of copy of this order, while calculating limitation for filing the suit. No costs.

29.01.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
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W.P.No.3759 of 2022

To

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W.P.No.3759 of 2022

S.SOUNTHAR, J.

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Pre-delivery order made in
W.P.No.3759 of 2022

29.01.2025