

W.A.No.1346 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

CORAM:

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.A.No.1346 of 2024

Mrs.Arokyamary .. Appellant

vs.

1.The Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The Secretary to Government,
Public Health and Family Welfare,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

3.The District Collector,
Uthagamandalam, The Nilgiris District.

4.The Deputy Director,
Medical, Rural Health and Family Welfare Department,
Uthagamandalam, The Nilgiris District.

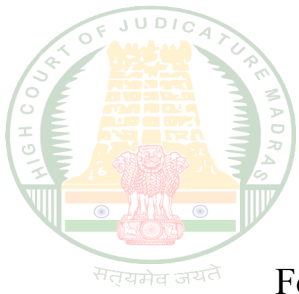
5.The District Medical Officer,
Government Head Quarters Hospital,
Ooty, The Nilgiris.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 18.11.2021 made in W.P.No.23395 of 2018.

For Appellant

: M/s. P.Asha Priya



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For Respondents

: Mrs. Sneha,
Special Government Pleader
for R2, R4 & R5

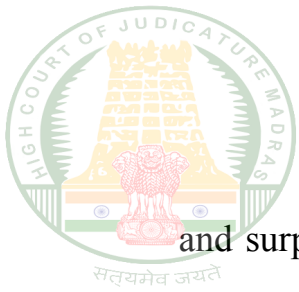
: Mr. M.Venkateswaran
Special Government Pleader
for R1 to R3

JUDGMENT

(Judgment of the Court was delivered by ***J.NISHA BANU, J.***)

This writ appeal is preferred as against the order of the learned Single Judge dated 18.11.2021 made in W.P.No.23395 of 2018.

2. The appellant herein is the writ petitioner. The case of the appellant is that out of wedlock with Mr.Mariadoss, she begot two female children on 16.02.2011 and 13.12.214 respectively. According to the appellant, her children are now studying 2nd standard and L.K.G. respectively and she is a housewife and her husband is doing masonry coolie works. Whiles, based on the doctors advise of Government Sait Hospital, the appellant gave consent and underwent for LSCS with sterilization operation on 13.12.2014 with inpatient ID No.5457 and the 5th respondent has also issued a certificate to that effect. Thereafter, due to stoppage of mensuration cycle, the appellant approached a doctor at Victory Hospital, Sulthan Bethery, where to her shock



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and surprise, she came to know that she was pregnant once again, vide scan report dated 06.07.2017. In this regard, the husband of the appellant caused a legal notice to the respondents and called upon the doctor of the 5th respondent hospital who performed the LSCS Sterilization Operation on 13.12.2014 with gross medical negligence and also sought a sum of Rs.15,00,000/- as compensation for the medical negligence which caused mental agony, physical suffering and also for future prospects of the third respondent for his impairments.

3. In response to the legal notice, the fourth respondent directed the Deputy Director, Family Welfare, Ooty, vide proceedings dated 16.08.2017 to take appropriate action. On 26.08.2017, thirdly a male child was born to the appellant at Government Sait Hospital, Ooty, but unfortunately the said child was born with Lumbosacral Myelomeingocoele defect. According to the appellant, if the surgery was properly done by the said doctor, then the subsequent causes such as disabled baby would not have born, which led to mental agony and countless hardship to her family. The appellant also sent a representation to the respondents 1 to 4 on 11.01.2018, however, the 4th respondent vide proceedings dated 20.09.2017 and 08.02.2018, insisted the appellant to receive an amount of Rs.30,000/- as compensation and undertake



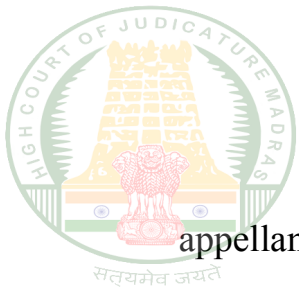
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note to make any further claims. Hence, the appellant / writ petitioner has filed the aforesaid writ petition.

4. The Writ Court, taking into consideration of the fact that these types of cases can be resolved only by the Consumer Disputes Redressal Forum and the petitioner / appellant has wrongly approached the Court, had disposed of the writ petition by granting liberty to the writ petitioner to file an appropriate application before the Consumer Disputes Redressal Forum concerned within a period of six months and if such an application is filed, the Consumer Disputes Redressal Forum concerned shall consider the case of the writ petitioner after affording an opportunity of personal hearing and to pass appropriate orders, against which the appellant is before this Court.

5. Heard the learned counsel for the parties and perused the entire materials available on record.

6. This is a very unfortunate case of medical negligence, where the appellant has begot a male child with disability called Lumbosacral Myelomeningocele defect, inspite of the LSCS sterilization operation done. The



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appellant has raised a claim for compensation of Rs.15,00,000/- and whereas it is the stand of the respondents that in a case of this nature, the appellant is entitled only to a sum of Rs.30,000/-. There are disputed question of facts with regard to whether the 5th respondent Hospital had performed the surgery in a negligent manner as alleged by the appellant and whether the second opinion given to the appellant by other doctors is authentic or not. However, disputed question of facts cannot be gone into by this Court and therefore, the Writ Court has rightly took a view that these types of cases can be resolved only by way of Consumer Disputes Redressal Forum and accordingly, disposed of the writ petition by granting liberty to the appellant to approach the Consumer Disputes Redressal Forum. This Court is in complete agreement with the view taken by the learned Single Judge. The Hon'ble Supreme Court in the decision in ***State of Punjab v. Shiv Ram and Others reported in (2005) 7 SCC 1***, has emphasized the need for devising a welfare fund or insurance scheme to deal with such type of cases. This Court finds no reason to interfere with the order of the learned Single Judge.

7. Accordingly, this Writ Appeal stands dismissed. No costs.



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[J.N.B., J.] [M.J.R., J.]
10.07.2025

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Index : Yes / No
Internet : Yes / No
Mrp

To

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