



W.P.(MD).No.4291 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.02.2025

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

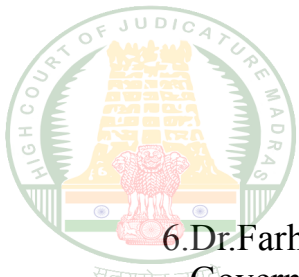
W.P.(MD).No.4291 of 2025

D.Ramu

.. Petitioner

Vs.

- 1.The Secretary,
Tamil Nadu Public Family Welfare Department,
Secretariat,
Chennai.
- 2.The District Collector,
The Collectorate,
Periyamilaguparai,
Trichy.
- 3.The Medical Superintendent,
Government Hospital,
Manapparai,
Trichy District.
- 4.The Deputy Director of Rural and Medical Services,
Government Head Quarter Hospital,
Trichy.
- 5.The Manager,
United India Insurance Co. Ltd.,
Cantonment,
Trichy.



W.P.(MD).No.4291 of 2025

6.Dr.Farhana,
Government Doctor,
Government Hospital,
Manapparai,
Trichy.

7.Dr.Arunkumar,
Government Doctor,
Government Hospital,
Manapparai,
Trichy.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the 1st to 4th respondents to pay a just and reasonable compensation to the sum of Rs.10,00,000/- (Ten Lakhs) for the negligent pregnancy treatment of the respondents No.6 and 7 which led to the hurt of petitioner's son, namely, R.Pandidurai based on the petitioner's representation dated 06.11.2024 within stipulated period.

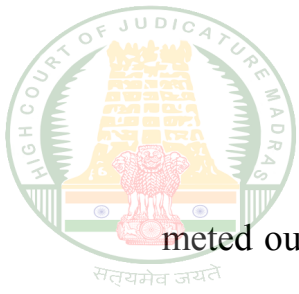
For Petitioner : Mr.Arumugam
for Mr.D.Boopal

For R-1 to R-4 : Mr.S.Vinodh
Government Advocate

For R-5 : Mr.C.Karthik

ORDER

The petitioner seeks a Mandamus to direct the respondents 1 to 4 to pay compensation of a sum of Rs.10,00,000/- for the negligent pregnancy treatment



W.P.(MD).No.4291 of 2025

meted out by the respondents 6 and 7, that affected the son of the petitioner, by name, R.Pandidurai.

2. The case of the petitioner is that he married one Pothumani. The wedlock resulted in the birth of a male child. The child was born on 23.05.2019 at the Government Hospital, Manapparai, Trichy. Mrs.Pothumani had been attended to by the respondents 6 and 7. According to the petitioner, on account of the careless manner in which the pregnancy was handled, the child suffered an injury, the nature of it being an erosion of skin on the head. He alleges that the respondents 6 and 7 were lethargic and inhumane. They had informed him that such injuries are common in any child birth. The petitioner further pleads that he admitted his son at Noor hospital in Thuvarankurichi. He was informed that on account of the injury the child had suffered at the time of delivery, that area will remain affected.

3. Aggrieved by the actions of the respondents 6 and 7, the petitioner filed a complaint before the District Consumer Disputes Redressal Forum at Tiruchirappalli, seeking compensation. This petition was received as C.C.No.32 of 2021. After contest, the petition was dismissed holding that the Consumer Court has no jurisdiction.



W.P.(MD).No.4291 of 2025

WEB COPY

4. The petitioner pleads that his child is suffering even as on today on account of the negligent act of the respondents 6 and 7. Hence, claiming compensation, he has filed the present Writ Petition.

5. When the matter came up for admission, I directed Mr.S.Vinodh, the learned Government Advocate, who took notice on behalf of the respondents 1 to 4, to file a counter affidavit.

6. Mr.Vinodh has filed a counter affidavit sworn by the Hospital Superintendent, Government District Headquarters Hospital, Manapparai, Trichy District on 26th February, 2025. In the said counter, the negligence alleged as against the respondents 6 and 7 is denied. The counter affidavit reads that the child was born with a rare congenital birth defect called, 'Aplasia Cutis Congentia'. It is pleaded that the Joint Director of Health Services conducted an inquiry on 05.07.2019, i.e., soon after the birth on 23.05.2019, and came to a conclusion that the affliction suffered by the child is a birth defect. Another inquiry was conducted by a Neonatologist attached to the Mahatma Gandhi Government Memorial Hospital, Tiruchirappalli, who also confirmed that the patch on the head is on account of a birth defect. The counter pleads that the



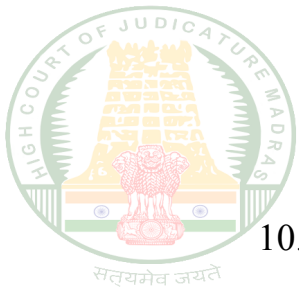
W.P.(MD).No.4291 of 2025

situation was explained to the attenders of Mrs.Pothumani and only thereafter, the mother and child were discharged.

7. I heard Mr.Arumugam for the petitioner, Mr.S.Vinodh, learned Government Advocate for the respondents 1 to 4 and Mr.C.Karthik for the fifth respondent.

8. This Court has the power to award compensation in exercise of the power enshrined under Article 226 of the Constitution of India, if the facts indicate out to negligence by the Government Doctors. However, prior to awarding such compensation, the Court must have irrefutable evidence before it to conclude that there has been negligence on the part of the Doctors. *Res Ipsa Loquitur* is one of the principles that can be utilized for concluding the issue on negligence.

9. However, here is a case where the petitioner pleads that his son suffered injury at the time of delivery being performed on his wife, Pothumani. The stand of the Government is that it is not a case of negligence, but one of congenital defect. It pleads that an inquiry had been conducted not once, but twice, first by the Joint Director of Health Services and the second, by a Neonatologist attached to the Mahatma Gandhi Government Memorial Hospital at Tiruchirappalli.

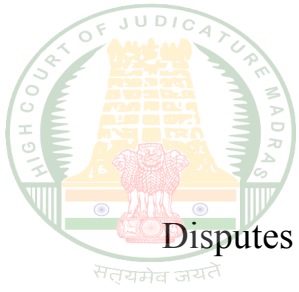


W.P.(MD).No.4291 of 2025

10. Whether the affliction that is caused on the child is due to medical negligence or is a result of a congenital defect cannot be decided in a Writ Petition. It requires evidence and more certainly, expert evidence to be adduced on both sides. It is not a matter which I can conclude by way of affidavits.

11. The injury on the child is accepted. Therefore, the first condition is satisfied. The other aspect whether the injury was caused by negligence or whether it is a birth defect, as pointed above, requires oral and expert evidence. As I am not in a position to record the same, I cannot entertain the Writ Petition.

12. A party cannot be remediless. The injury having been caused to the child, the cause of action arises on a day-to-day basis. In any event, the petitioner had approached the Consumer Court within time and thereafter, this Court also, within the period of limitation. In ***P.Sarathy Vs. State Bank of India, (2000) 5 SCC 355***, the Supreme Court held that a proceeding initiated before a Tribunal or a Writ Court can be utilized for the purpose of calculating the period of limitation under Section 14 of the Limitation Act. Therefore, even if the cause of action is not recurring, as the petitioner has approached the wrong forum within time, he will be entitled to the exclusion of the period from the date the complaint has been presented before the District Consumer



W.P.(MD).No.4291 of 2025

Disputes Redressal Forum, Tiruchirappalli, till today for the purpose of

presenting the suit. Leaving open the right of the petitioner to present the suit,

this Writ Petition is dismissed. There shall be no order as to costs.

27.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

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W.P.(MD).No.4291 of 2025

V.LAKSHMINARAYANAN,J.

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W.P.(MD).No.4291 of 2025

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