

W.P.(MD).No.14252 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on:
17.04.2025

Pronounced on:
01.07.2025

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition (MD) No.14252 of 2023 &
WMP(MD).Nos.12059 & 12141 of 2023

- 1.Rajakumar
- 2.Periyannan
- 3.Mohankumar
- 4.Vellaisamy

... Petitioners

-Versus-

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
School Education Department,
Fort St. George,
Chennai.
- 2.The Director of School Education,
The Director of School Education Office,
College Road,
Chennai.
- 3.The District Collector,
Office of the District Collector,
Karur District.
- 4.The District Collector,
Office of the District Collector,
Pudhukottai District.



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5.The Superintendent of Police,
Office of the Superintendent of Police,
Karur District.

6.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Kulithalai, Karur District.

7.The Tahsildar,
Ilupur Taluk,
Pudhukottai District.

8.The Block Development Officer,
Viralimalai,
Ilupur Taluk, Pudhukottai District.

9.The Inspector of Police,
Mayanoor Police Station,
Karur District.

10.The Head Master,
The Government Middle School,
Pilipatti Panchayat Union,
Viralimalai,
Pudhukottai District.

11.Jebba Sageyu Ibrahim

12.Pottumani

13.Thilagavathi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus directing the respondents to provide fair and adequate compensation to the petitioners or petitioner's family members for the death of the



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petitioner's daughters by name Tamilarasi daughter of Rajakumar aged about 13 years, Lavanya daughter of Periyannan aged about 11 years, Iniya daughter of Mohankumar aged about 11 years and Sophiya daughter of Vellaisamy aged about 12 years by the negligent of the respondents No.10 to 13 officials within the time stipulated by this Court.

<i>For Petitioners</i>	<i>: Mr.A.V.Saha for Mr.R.Alagumani</i>
<i>For Respondents 1, 2, 8 to 10</i>	<i>: Mr.V.Om Prakash, Government Advocate</i>
<i>For Respondents 3, 4 & 7</i>	<i>: Mr.A.Kannan, Additional Government Pleader</i>
<i>For Respondents 5, 6 & 9</i>	<i>: Mr.M.Karunanithi, Government Advocate</i>

ORDER

This writ petition seeks for a direction to the respondents herein, to provide fair and adequate compensation to the petitioners for the death of their daughters, aged between 11 and 13, which transpired due to the negligent act of respondent Nos. 10 to 13, all of whom are employed as headmaster, and teachers, respectively in the Government Middle School, Pilipatti Panchayat Union, Viralimalai, Pudhukottai District.



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Facts

WEB COPY 2. The Petitioners are coolie workers residing in the same village of Pillipatti. They are the fathers of the four minor children, namely:

- (i) Tamilarasi, aged 13 years;
- (ii) Lavanya, aged 11 years;
- (iii) Iniya, aged 11 years; and
- (iv) Sophiya, aged 12 years.

3. The children were studying at Government Middle School, Pillipatti, in Viralimalai Taluk of the Pudukottai District. An incident occurred on 15.02.2023. These young girls tragically drowned to their deaths in Cauvery near Mayanoor, Karur District. The manner in which the incident took place is narrated hereunder.

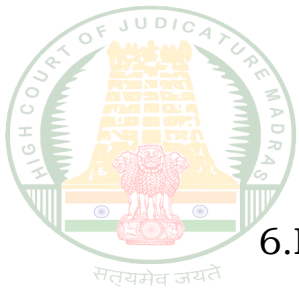
4. The 2nd respondent organised a State-level Republic Day football tournament. The petitioners' daughters were selected as part of a team to represent their school and participate in the



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tournament. Pursuant thereto, on 14.02.2023, a group of 15 students, studying VI, VII, and VIII standards, embarked on their journey escorted by respondents 11 to 13, who are two teachers and one physical education teacher employed at the 10th respondent school. The event took place at Kongunadu College of Engineering and Technology in Thottiyam, Trichy District. The respondents 11 to 13 assured the parents of the participating children, including the petitioners, that their children would be properly escorted and returned safe and secure.

5. On the very next day, viz., on 15.02.2023, the petitioners' daughters and the other selected students participated in the football match. They lost their game. Subsequently, the petitioners' daughters, along with the other students, were accompanied by respondents 11 to 13 to the Cauvery River flowing in the Mayanoor Town of Karur District to take a bath under their supervision. Quiet flowed the river. It allured the children. They entered the water for a dip, but lost their lives.



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6.It is the case of the petitioners that two of the three officials, namely respondents 12 and 13, failed to accompany and supervise the minor students, while they were taking a dip in the river. The said respondents had returned to Uraiyur, Trichy, while respondent No.11 remained on the riverbank along with the 15 students, including the petitioners' daughters.

7.While so, two students by the names of Pavina and Gokila went to the centre of the river. They began drowning. This is when Sophiya, daughter of the 4th petitioner, attempted to rescue her peers. Thereafter, a few other students, including the daughters of petitioners 1 to 3, started drowning in the river. Sophiya went to their rescue. Sophiya succeeded in saving 11 out of the 15 students, except for the petitioners' daughters. Unfortunately, in her attempt to rescue her peers, Sophiya herself succumbed to drowning.

8.After these unfortunate events, the fire and rescue services from Karur and Musiri in Trichy District arrived at the



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scene. They retrieved the victims' bodies. The bodies were sent to

the Karur Government Medical College Hospital for post-mortem.

It was done without notice or consent, from the parents.

Autopsies were allegedly conducted, without identification of the deceased, by their families or their approval.

9. Meanwhile, the incident was registered by the 9th respondent as a case under Section 174 of the Cr.P.C at the behest of the 13th respondent, who had lodged a complaint. The same was registered in Crime No. 60 of 2023 dated 15.02.2023.

10. The bereaved families were compensated by the Tamil Nadu Government with an ex gratia payment of Rs. 2,00,000/- for every victim's family. It is contended that this amount is grossly inadequate in light of the circumstances and the loss of promising and meritorious children. Representations dated 27.03.2023 were made to the State respondents seeking fair and adequate compensation, as well as compassionate appointment in a government job for one member of each affected family. The

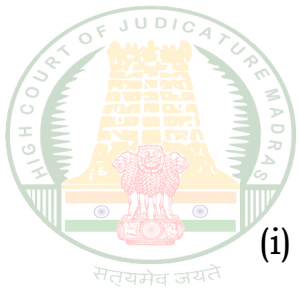


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same was assured by the 4th respondent, and Ms. Jothimani, Hon'ble Member of the Parliament (Lok Sabha). However, to date, no concrete action has been initiated in response. Hence, the writ petition.

Counter of the 2nd respondent:

11.The 2nd respondent filed a counter on behalf of the 1st respondent also. The 2nd respondent would accept the death of the four children due to drowning. He would point out that, as pleaded by the petitioners, a sports event had been arranged by the Education Department. Referring to various official proceedings, he would plead that the event was properly organized and approved by the authorities. A requisition-cum-permission was sought by respondents 11 & 13, duly endorsed by the 12th respondent. The Block Educational Officer, Viralimalai, approved the requisition. Consequent to this approval, 15 children, all aged below 14 years, participated in the Football Tournament on 15.02.2023. The counter proceeds to state that two children by name



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(i) Lavanya and

(ii) Iniya

were not part of the original team. They replaced two other students who could not make it to the event.

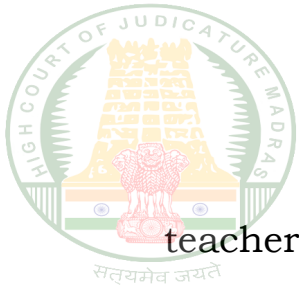
12.The 2nd respondent further pleads that when the students and teachers were returning to Pillipatti, the students expressed their interest to take a bath in Cauvery River. The teachers were initially not willing. Subsequently, 15 children accompanied by the 11th respondent alone went to Mayanoor near Chellandi Amman Koil to bathe. The 2nd respondent states that the 11th respondent advised the students not to enter the river till he ascertained the depth of the river. However, even before he did so, the children entered the water, resulting in their drowning. He accepts that

- (i) Tamilarasi was studying in 8th standard;
- (ii) Sofia was studying in 7th standard;
- (iii) Lavanya was studying in 6th standard; and
- (iv) Iniya was studying in 6th standard.



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WEB COPY 13. He pleads that the District Educational Officer, Pudhukottai, directed the Block Educational Officer, Viralimalai, to conduct an enquiry into the incident and submit a report. The Block Educational Officer, Viralimalai, accordingly conducted an enquiry, and pursuant thereof, the respondents 11 to 13 were suspended on 15.02.2023. He further adds, the complaint given to the Police was taken on file in Crime No.60 of 2023 under Section 174 of the Criminal Procedure Code. The counter further adds that an *ex gratia* payment had been made by the Government to the parents of the deceased. In addition, one Dr.C.Vijaya Bhaskar, a Former Minister in the State of Tamil Nadu and Mr.Siva V.Meyyanathan, a Former Minister of Environment & Sports Department had paid Rs.50,000/- and Rs.1,00,000/- respectively to each of the parents of the deceased. He adds that the Tamil Nadu Elementary School Teachers Association had paid Rs.40,000/- to each of the parents of the deceased children. In conclusion, the 2nd respondent pleads that it is the specific duty of the leading



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teachers, who had accompanied the 15 students, to ensure that

they returned directly to the School, instead the teachers, namely the respondents 11 to 13 took a wrong call and permitted the students to take a bath in the River Cauvery. He states, it is the duty and responsibility of the leading teachers not to permit the students to bathe, and that it is a purely independent and negligent act on their part. Finally, relying upon the judgment in ***S.D.O.Grid Corporation of Orissa Ltd., Vs. Timudu Oram, [2005 (6) SCC 156]***, the 2nd respondent would plead for dismissal of the writ petition.

14.The other respondents, though served, did not file separate affidavits. They relied upon the affidavit filed by the 2nd respondent.

Arguments of the parties

15.This Court heard Mr.A.V.Saha, for the petitioners, Mr.V.Om Prakash, learned Government Advocate for the respondents 1, 2, 8 & 10, Mr.A.Kannan, learned Additional



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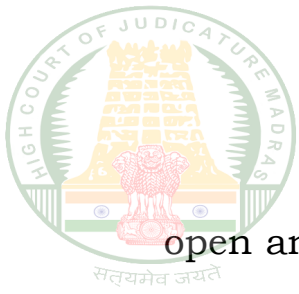
Government Pleader for the respondents 3, 4 & 7 and

Mr.M.Karunanithi, learned Government Advocate for the respondents 5, 6 & 9.

Petitioners' Submissions

16.Mr.A.V.Saha submitted that the respondents 10 to 13, being public servants and officials acting in their official capacity, were duty-bound to exercise reasonable care, vigilance, and foresight in the execution of their responsibilities while escorting minor girl students for a government-sponsored extra-curricular sporting event. The doctrine of *loco parentis*, which mandates that the educational authorities must act in place of the parent when the child is under their care, squarely applies in the present context. Their failure to adhere to this fiduciary standard of care constitutes gross negligence, and dereliction of duty.

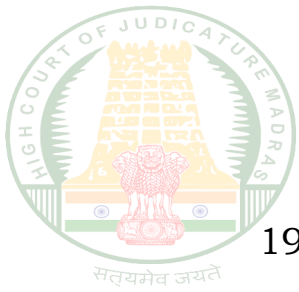
17.It was further submitted that the decision of the respondent teachers to allow or take the minor students to an



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open and perilous waterbody such as the Cauvery River, without necessary safety precautions, is not merely an act of poor judgement but a culpable omission. It reflects an unconscionable disregard for child safety norms and risk assessments. These aspects are ordinarily expected in such scenarios from accompanying teachers.

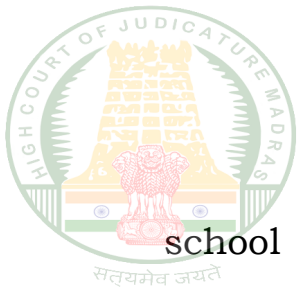
18.Right to Life under Article 21 of the Constitution of India has been expansively interpreted by the Supreme Court to include the right to live with dignity, safety, and protection from negligent actions of the State or its functionaries. This norm had been violated by respondents 10 to 13. The failure of respondents 10 to 13 in not exercising the care expected of them and their overt inaction in not ensuring the safety of the minors by allowing them to swim in the river, without adequate supervision, had resulted in the loss of young lives. He pleads that it is a shocking breach of the State's constitutional obligation to protect its citizens, more particularly vulnerable minors.



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19.He adds the doctrine of *vicarious liability* is clearly attracted in the present case. The deceased minors were studying in the 10th respondent Government School. They had been selected to represent the school in a State-level Republic Day football tournament organised by the 2nd respondent. They were accompanied by respondents 11 to 13, teachers employed in the 10th respondent school. These respondents were solely responsible for their safety and well-being throughout the journey. While returning from the football tournament, the respondent teachers failed to exercise the care required of them. By allowing the students to swim in the Cauvery River flowing in the Mayanoor town of Karur, without taking any precautionary measures, thereby imperilling the safety of the children. This act of the said respondents alone constitutes a lack of a clear sense of duty on their end.

20.Adding to this, two of the three escorting teachers displayed gross negligence when they went to Uraiur in Trichy for purposes beyond their duty to escort and take care of the



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school children, while the children were bathing in the river without adequate supervision. Therefore, the State, being their employer, is vicariously liable and must answer for the negligence and inaction of respondents 11 to 13 in accordance with the doctrine of *respondeat superior*.

21.It was contended that mere *ex gratia* compensation of Rs.2,00,000/- for each victim's family is wholly arbitrary and inadequate, and fails to account for the life, aspirations, and irreplaceable future of the deceased children. Their untimely demise has not only resulted in emotional trauma and economic hardship, but has also extinguished the possibility of promising careers and a better future for their respective families.

22.It was additionally contended that the events that followed post-incident were bereft of cooperation from the respondent authorities. Despite multiple representations for enhanced compensation, no meaningful action has been initiated. Hence, he pleads for adequate compensation. He relies



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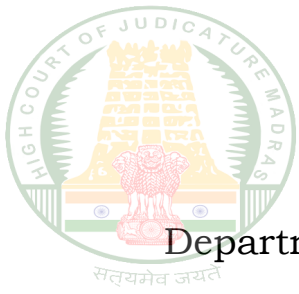
on the calculation method adopted under the Motor Vehicles Act

WEB for fixation of compensation.

Respondents' Submissions:

23.It is contended on behalf of the respondents that while the incident resulting in the untimely demise of four minor students is undoubtedly tragic and unfortunate, the writ petition itself is devoid of merit. It was submitted that the incident occurred, not due to any systemic or institutional failure, on the part of the Education Department, but rather due to the isolated and unauthorised negligence on the part of the individual teachers, namely respondents 11 to 13. They had been entrusted with the duty of accompanying the students and they failed in that duty. So the State cannot be held liable for the same.

24.It was further contended that the football match conducted on 15.02.2023 was part of a routine inter-school sports initiative organised to commemorate Bharathiyar's birth anniversary and Republic Day. The same had been duly sanctioned by the competent authorities of the Education



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Department. Specific reference was made to the communication

WEB CON issued by the Joint Director (NSS) in Na.Ka.No. 013102/M/E4/2022 dated 15.11.2022, followed by the proceedings of the Chief Educational Officer, Tiruchirappalli, in Na.Ka.No.09327/Aa7/2022 dated 09.02.2023, wherein instructions and permissions were circulated for the conduct of the said events.

25.It was also brought to the attention of this Court that the Block Educational Officer, Viralimalai, vide order dated 14.02.2023, granted permission for the participation of students from the 10th respondent school in the said tournament, based on a requisition submitted on 13.02.2023 by respondents 11 and 13, with the approval of 12th respondent.

26.It was submitted that following the conclusion of the tournament, wherein the team representing 10th respondent school had lost; the students, while returning to their homes, requested permission to bathe in the Cauvery River near



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Mayanoor, which was enroute. Despite initial resistance, the accompanying teachers, particularly the 11th respondent, permitted the detour. It was submitted that this act of deviation from the official itinerary was neither sanctioned nor condoned by the Department, and was taken solely at the discretion of the said teachers.

27.A reference was made to second respondent's counter affidavit wherein it is stated that when the 11th respondent entered the river to ascertain its depth, a few students voluntarily entered the water without permission. In a tragic turn of events, four students drowned despite the attempted rescue efforts of their peers.

28.In response to the incident, immediate administrative action was taken by the District Education Officer, Pudukottai, who ordered an inquiry through the Block Educational Officer. Based on the findings, respondents 11 to 13 were placed under suspension with effect from 15.02.2023, as per Na.Ka.



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29.Furthermore, the State Government took compassionate action by sanctioning and disbursing *ex gratia* compensation of Rs. 2,00,000/- per deceased child from the Chief Minister's Relief Fund. Additional voluntary contributions amounting to Rs. 1.9 lakhs per family were made by former Ministers and the Teachers' Association. The total compensation received by each bereaved family was approximately Rs.3.9 lakhs.

30.It was strongly urged that while the petitioners have sought further compensation and compassionate appointments, a petition seeking such reliefs, particularly under Article 226 of the Constitution, is not maintainable in view of the disputed facts and the question of personal negligence. The respondents place reliance on the decision in **SDO, GRID Corporation of Orissa Ltd. & Ors. v. Timudu Oram, (2005) 6 SCC 156**, wherein it was held that disputed questions of fact requiring detailed examination of evidence ought not to be entertained in



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writ proceedings under Article 226.

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31.Lastly, it was contended that the Department has discharged its obligations, both administratively and financially, to the extent permissible within the scope of law. The lapse, if any, lies solely on the part of the erring teachers who acted beyond the scope of their authority. Therefore, it was argued that the writ petition be dismissed.

Maintainability of Writ Petition:

32.It was argued by the second respondent that the judgment of the Supreme Court in ***S.D.O.Grid Corporation of Orissa Ltd. Vs. Timudu Oram, [AIR 2005 SC 3971]*** would apply to the facts of the case and therefore, the writ petition should be dismissed. For the following reasons, I do not think so.

33.A careful perusal of the aforesaid judgment in ***Timudu Oram***'s case shows that while the petitioners, in that case, had pleaded that death due to electrocution occurred on account of



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the negligence of the Grid Corporation of Orissa, the Grid

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Corporation of Orissa had denied the same. This gave rise to a dispute on facts. The Grid Corporation of Orissa, before the Supreme Court, had pleaded that the deaths had not occurred as a result of their negligence, but on account of the negligence of the electrocuted persons, or on account of the act of God, or on account of act of some other persons. The High Court, in that case, had not given any finding that Grid Corporation was in any way negligent in performance of its duty. It further pointed out that the writ petition had been filed after a lapse of 10 years from the date of incident and no reasons had been given for the inordinate delay. It was under those circumstances that the civil appeal came to be allowed and the writ petition was dismissed. Such is not a position in our case. There are no disputed question of facts.

34.The counter affidavit filed by the 2nd respondent on behalf of the 1st respondent admits to the negligence of respondents 11 to 13. When the facts are not in dispute, a



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Constitutional Court need not send a party away from its doors,

stating that there is an alternate remedy to file a suit. A Constitutional Court retains power to award compensation in appropriate cases. The facts, having been admitted by the 2nd respondent, and the writ petition having been filed within two months from the date of incident, I am not in a position to apply the judgment of **Timudu Oram**'s case to the facts of the present case.

35.I have not relied upon the affidavit of the petitioners in order to reach the conclusion that there has been a breach of duty and consequential damage. I have relied upon the counter affidavit of the respondents in order to conclude to the aforesaid effect. Hence, there is no iota of dispute in the facts.

Discussion

36.Before this Court enters into the merits of the case, certain fundamentals must be borne in mind. Three essential aspects have to be present while dealing with negligence. They



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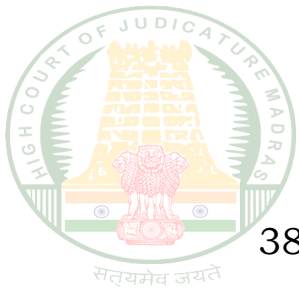
are:

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- (i) There should be a duty to take care of the person;
- (ii) The duty should have been breached, and;
- (iii) On account of such breach, it has resulted in damages.

37. Under Article 226 of the Constitution of India, the High Courts have the power to grant compensatory damages against governmental institutions, as well as against the authorities, who are in charge of such institutions for having failed in the performance of their duties. The issues in the present case are:

- (i) Whether the teachers had a duty to take care of the children, whose parents have placed them in their hands?
- (ii) Whether there was a breach of performance of such duty by them?
- (iii) What was the magnitude of the consequential loss suffered by the victims? and
- (iv) What is the quantum of compensation?



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38.The parents had handed over the custody of the children to the teachers, hoping that the children would be brought back safely. 15.02.2023 happened to be a working day. It was a Wednesday. As the event had been held during the fag end of the academic year, necessary approvals from the superiors had to be taken. Respondents 11 & 13 had sought approval to participate in the event. This was endorsed by the 12th respondent – Headmistress. It was placed before the appropriate authorities. All the authorities had granted approval for the participation of the students in the event. This shows the students were not a rag-tag band of volunteers, who on their own participated in the event, but had been under the supervision of respondents 11 to 13, while attending a State sponsored event. It is not in dispute that the children had participated in the event and the unfortunate incident took place on their return. It is the duty of the teachers to take care of the students who are in their care and custody.

39.In ancient and medieval India, the teachers were not only educators, but also mentors and caregivers. They took a holistic approach in ensuring the students' physical, mental and

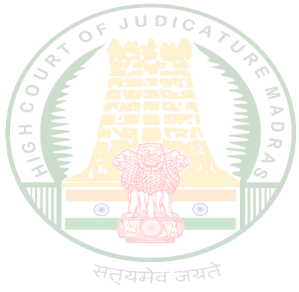


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spiritual development. The students used to be provided with all needs including food, clothing and residence. The teachers took care of them even when the students fell ill. Teachers act as mentors and guides, and this fosters a strong bond with the students. The bond between a teacher and a student was, is, and will always be a close one.

40. With the advent of British form of education system, the students are no longer residing with the teachers, nor are the teachers taking care of the students as they used to be. The responsibilities of the Gurukulam-based education are now divided between the teachers and the parents. Necessities and spiritual development of the students are taken care of by the parents, whereas the physical and mental development of the students are taken care of by the teachers.

41. The aforesaid observation is drawn in order to show that in this country, originally the teachers were placed with all the responsibilities, and today it is being shared by the parents.

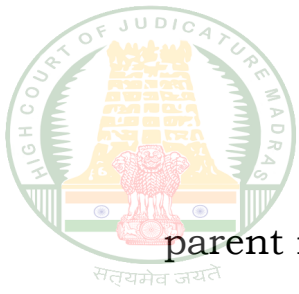


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42.The four children had been placed in the custody of the teachers with a fond hope that the students would participate in the tournament and return safely to their house. The teachers owed the duty not only to the manner in which the children performed in the sporting event, but they owed a higher duty to ensure that the students be safely handed over to the custody of their parents. The glittering and inviting waters of Mother Cauvery would have certainly allured the students. The teachers should have exercised caution and ensured that the allurements of the students did not have resulted in fatality. Unfortunately, they erred resulting in the loss of four children's lives.

43.When a child is placed in the custody of another, the latter owes the duty not only to the child, but also to the parents to ensure that the child will be returned safely. It is in the best interest of the child that the decisions of a “pro term” guardian be taken. No parent would have permitted his/her child to jump into a river without taking appropriate precautions. When a



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parent is replaced by a teacher, the same amount of caution that

would be exercised by the former is to be exercised by the latter.

That not having been done, not only has the duty to take care of the children been breached, but has resulted in the loss of lives of four children.

Duty to take care:

44.The undisputed facts in this case are that the four children, namely, Tamilarasi, Lavanya, Iniya and Sophiya were studying at Government Middle School, Pillipatti Village, Viralimalai Taluk, Pudukottai District. A requisition letter was sent by the School through the respondents 11 and 13 and it was duly accepted and approved by the Block Educational Officer, Viralimalai.

45.Pursuant to the permission granted by the Block Educational Officer, the children were taken to the Football Tournament and participated in the said tournament. It is further not in dispute that the children were under the care and



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custody of the respondents 11 to 13.

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46.The children, while being in the custody of the teachers, as seen above, the teachers owe a duty to take care of the children. In fact, in the present times, on account of spending hours on end in the school till the children reached a discernible age, it is the teachers who literally supplant themselves as parents for the students.

47.A teacher owes a duty to ensure that the child is sent back to his/her home in the same manner as handed over by the parents to the school. If any mishap happens while the child is under the custody of the teacher, unless and until the teacher shows that he or she did not act negligently, the latter will be held responsible for the same.

48.The depth and speed of Cauvery at Mayanoor being unknown to the children, the 11th to 13th respondents should have guided their decision accordingly. However, the 11th



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respondent permitted the children to enter the water. Meanwhile,

respondents 12 and 13 could have assessed the situation better and taken necessary precautions. Sadly, they absented themselves from the scene, thinking it would be wise to leave behind 15 students under the care of the 11th respondent alone. This crucial breach of duty by those respondents has resulted in the death of four children. The daughter of 11th respondent was also in deep waters. Fortunately, she had been saved. The respondents 10 to 13 owed a duty to the children as well as to the parents regarding their safety. The 11th respondent, by permitting the children to enter the water had breached his duty. Respondents 12 and 13, who ought to have been present at the time, were away from the riverbank and hence, they are equally liable.

49.Perhaps, had another teacher been present, the girls would have accepted the gentle persuasion not to enter the water rather than the instructions given by the 11th respondent alone, to not wade into the deep waters. The fact that a wrong decision



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had been taken by the teachers accompanying the 15 students, has been conceded in paragraph 15 of the counter affidavit of the second respondent.

50.This discussion persuades me to reach the conclusion that the teachers owed a duty towards the students and their parents, and the said duty had been breached by permitting the students to enter the water of river Cauvery, and by not taking adequate safety precautions, as a result of which serious damage was caused to the writ petitioners on account of the death of the four children.

Negligence:

51.It is here that I would like to discuss the concept of negligence at length.

52.The famous case of ***Donoghue Vs. Stevenson, [1932] AC 562***, attempted to define negligence. Lord Macmillan held as follows:-



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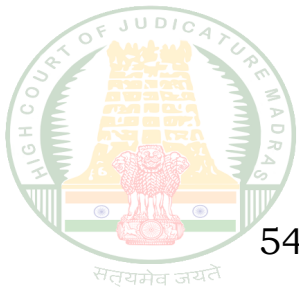
"The law takes no cognizance of the carelessness in the abstract. It concerns itself with carelessness only when there is a duty to take care and where failure in that duty has caused damage. In such circumstances, carelessness assumes the legal quality of negligence and entails the consequences in the law of negligence.

The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty."

53.I should add that the mere fact that someone had been injured by another or another's property, does not mean negligence has occurred. To attract negligence, one must act or fail to act in a way that someone's ordinary prudence would not act or fail to act in that particular manner, which results in the breach of such duty. Otherwise, there is no fault and no liability.

See, ***Blyth Vs. Birmingham Water Works Company, [1856]***

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54.Negligence is defined by the Oxford Advanced Learner's

WEB Dictionary, (9th Edition) as follows:

“negligence – the failure to give somebody / something enough care or attention”

55.Law recognizes several types of negligence as identified in ***Poonam Verma Vs. Ashwin Patel, AIR 1996 SC 2111*** and cited with approval in ***State of Haryana Vs. Smt.Santra, AIR 2000 SCC 1888*** and Charlesworth and Percy on Negligence XII Edition (2010) attempts to define a few of them. They are:

(i)**Active negligence** – negligence arising out of a positive act.

(ii)**Collateral negligence** – Collateral negligence or casual negligence comes into operation when a person, through a contractor, does work which from its nature is likely to cause danger to others, and there is a duty on his part to take all responsible precautions against such danger, and he does not escape from liability for the discharge of that duty by employing the contractor, if the latter does not take these precautions. Where an act complained of is purely collateral and arises incidentally



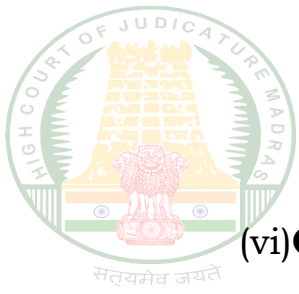
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in the course of the performance of the work, the employer is not liable, because he has never authorized that act. See, **Hole Vs. Sittingbourne and Sheerness Railway Company, (1861) 6 H & N 488.**

(iii)**Comparative negligence** – it determines the extent to which each party is responsible for the damages that have occurred. It can be loosely understood in India as contributory negligence. Contributory negligence is an expression meaning “negligence materially contributing to the injury”, the word “contributory” being regarded “as expressing something which is the direct cause of the accident”.

(iv)**Concurrent negligence** – this occurs where negligence of two or more parties combines to cause a single injury or damage. In such an eventuality, each person who has acted negligently is held liable for the damages caused.

(v)**Continued negligence** – this arises where a person persists in failing to exercise his duty to take care over a period of time, leading to injury or damages. It is applied where a party has a continuous obligation and fails to discharge the same.

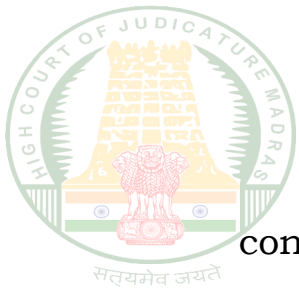


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(vi)**Criminal negligence** – this arises when one person acts so recklessly in disregard of a serious risk of harm that a reasonable person in the same situation would have perceived, that it results in harm or death of an other. The extent of a wrongdoer's liability depends, not on the degree of negligence, but on the amount of damage done. In the criminal Court, on the contrary, the amount and degree of negligence are the determining question. A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth and Percy on Negligence, Pg.1-16 to 1-18).

(vii)**Gross negligence** – this is an extreme and reckless act existing in the ordinary concept of negligence, with utter disregard to the safety of the person, who has suffered damages. To prove the same, it must be shown that a conscious choice had been made by the tortfeasor to ignore a substantial and unjustifiable risk, leading to inference of lack of care or diligence.

(viii)**Hazardous negligence** – this negligence arises in a situation where someone's reckless behaviour creates a dangerous condition potentially causing harm to others. It is a mixture of negligence, which is a failure to exercise reasonable care with a presence of hazardous



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condition or activity.

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(ix)**Vicarious Negligence:** Vicarious negligence occurs when one party is held responsible for an action of another. To give an example, if the act of driving by a minor has resulted in an accident, then his / her parents, who permitted the minor to drive without a license that led to the accident, are held to be vicariously negligent.

56. There are also other instances of careless conducts, which are identified as undue negligence, excessive negligence, ordinary negligence and slight negligence. However, these various distinctions become irrelevant when one considers negligence as a breach of duty to take care. Rolfe.B said, he could see no difference between negligence and gross negligence, that it was the same thing with the addition of a vituperative epithet. See, ***Wilson Vs. Brett (1843) 11 MW 113*** and Charlesworth and Percy on Negligence Act (1.15).

57. The Black's Law Dictionary defines negligence as follows:

“Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as



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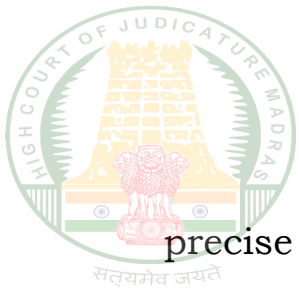


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to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.”

58.This definition of negligence was approved by the Supreme Court in **Poonam Verma Vs. Ashwin Patel, [(1996) 4 SCC 332 (para.no.42)]**. Negligence can also be said to be the absence of reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances. Consolidating and approving the aforesaid, the Supreme Court laid down the several aspects of negligence in **M.S.Grewal and another Vs. Deep Chand Sood and others, [(2001) 8 SCC 151]**, the extrapolation of which into the present facts and circumstances will be dealt with in the eventual part of this judgment.

59.The jurisprudential concept of negligence defies any



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precise definition. In current forensic speech, negligence has

three meanings. They are:

- (i) State of Mind, in which it is opposed to intention;
- (ii) Careless conduct, and
- (iii) The breach of a duty to take care that is imposed by either common or statutory law.

(See, *Jacob Mathew Vs. State of Punjab*, [(2005) 6 SCC 1]).

60. The Supreme Court approved the following extract on the requirement of negligence. Clerk & Lindsell on Torts (18th Ed.) set out four requirements. They are:

“(1) the existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damages in suit on the class of person to which the claimant belongs by the class of person to which the defendant belong is actionable;

(2) breach of the duty of care by the defendant, i.e., that it failed to measure up to the standard



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set by law;

(3) a casual connection between the defendant's careless conduct and the damage;

(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."

61.This is not the first time the issue of the liability of an educational authority for negligence is coming up before the Courts. Law reports are replete with such instances. Fortunately, for this Court, the Supreme Court has gone into this issue in detail in a case, which is somewhat similar to the present matter at hand in **M.S.Grewal**'s case (cited supra).

62.A school in Pathankot had organized a picnic for its students. The students were minors. The school selected the picnic site on the bank of river Beas. The students were accompanied by five teachers, two mess boys, one supplier and a driver. They were further accompanied by two European ladies. All was well till lunch. Post lunch, 14 students and two teachers went down to the river. All of a sudden, the teachers discovered a

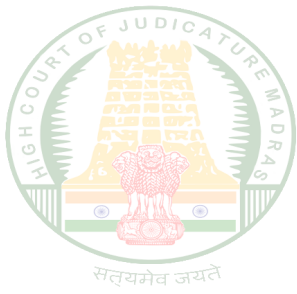


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dangerous spot in the river. The teachers managed to extricate themselves, but unfortunately, the students could not save themselves. 14 students died due to drowning. Writ petitions were filed seeking compensation. The High Court awarded Rs. 5,00,000/- compensation to each of the parents of the students, who died by drowning, and directed that this would carry an interest of 12% per annum from the date of the incident till the date of deposit.

63. When the matter went up to the Supreme Court, the Court held as follows:

“16. Duty of care varies from situation to situation — whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the playfield. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to a playground near a river for fun and a swim, the degree of care required stands at a much higher degree and no deviation



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therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for a swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken, especially against the minor children, stands at a much higher level than adults: children need much stricter care. ”

64.This in my view concludes the issue in favour of the writ petitioners. I also take guidance from the view of the Court of Appeal in ***Harris Vs. Perry and others, [(2009) 1 WLR 19]***. Lord Phillips of Worth Matravers spoke for the Bench. He held as follows:

“34.Children play by themselves or with other children in a wide variety of circumstances. There is a dearth of case precedent that deals with the duty of care owed by parents to their own or other children when they are playing together. It is impossible to preclude all risk that, when playing together, children may injure themselves or each other, and minor injuries must be commonplace. It is quite impractical for parents to keep children under constant surveillance or even supervision and it would not be in the public interest for the law to impose a duty upon them to do so. Some circumstances or activities may, however, involve an unacceptable risk to children



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unless they are subject to supervision, or even constant surveillance. Adults who expose children to such circumstances or activities are likely to be held responsible for ensuring that they are subject to such supervision or surveillance as they know, or ought to know, is necessary to restrict the risk to an acceptable level.”

65.The circumstances in the present case show that there was an unacceptable risk to the children in the waters of Cauvery. Had the teachers shown supervision and surveillance as was required of them, then this incident might not have happened at all. As the duty to take care of the children has not been adhered to by the teachers, this Court is constrained to conclude that there has been negligence on the part of the teachers.

Allurement

66.At this stage, I would turn my attention to a well-known principle in English Law, namely the Doctrine of Allurement. At its commencement, it was based on the broader field of occupier's liability. Today, it has expanded. This doctrine along



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with the principle of *res ipsa loquitor*, helps the Courts to arrive at a just conclusion.

67.The earliest of the cases is ***Lynch Vs. Nurdin, [(1841) 1 QB 29]***. It was a case where a seven year old child clambered on to an unattended cart left on a public street. At that time, the horse moved, and so did the cart. The child fell down and suffered injuries. Consequently, a suit for damages came to be filed. It was pleaded by the defendant that he was not liable on account of the fact that it was a case of trespass by the child. The English Courts did not agree, and held that leaving a dangerous and attractive item unattended, enabling children to have access to it, invites liability. The Court held

“The defendant was negligent in leaving the cart where it would clearly attract children to meddle with it.”

68.The doctrine of allurement came to be explained by Lord Atkinson in ***Cooke Vs. Midland Great Western Railways of Ireland, [1909 AC 229 at 237]*** in the following terms:

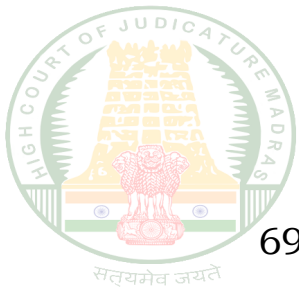


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“The authorities from Lynch Vs. Nurdin downwards establish, it would appear to me, first, that every person must be taken to know that young children and boys are of a very inquisitive and frequently mischievous disposition, and are likely to meddle with whatever happens to come within their reach; secondly, that the public streets, roads, and public places may not unlikely be frequented by children of tender years and boys of this character; and, thirdly, that if vehicles or machines are left by their owners, or by the agents of the owners, in any place which children and boys of this kind are rightfully entitled to frequent, and are not unlikely actually to frequent, unattended or unguarded and in such a state or position as to be calculated to attract or allure these boys or children to intermeddle with them, and to be dangerous if intermeddled with, then the owners of these machines or vehicles will be responsible in damages for injuries sustained by these juvenile inter-meddlers through the negligence of the former in leaving their machines or vehicles in such places under such conditions, even though the accident causing the injury be itself brought about by the intervention of a third party, or the injured person, in any particular case, be a trespasser on the vehicle or machine at the moment the accident occurred.”



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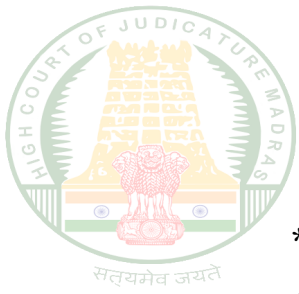
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69.The principle laid down by Lord Atkinson shows that it is the duty of the person in control of places / machines / vehicles to ensure that their actions do not result in injury for children or juveniles, who are presumed to be mischievous by their very nature.

70.The English Courts have taken the doctrine to such a level that even if a child were to eat poisonous berries in a public park, the local body has been held to be responsible. See, ***Glasgow Corporation Vs. Taylor, (1922) 1 AC 44.***

71.This doctrine has crossed the Atlantic and reached the American shores too. The doctrine of allurement is called “Attractive Nuisance Doctrine” in the United States. It has been codified in the Restatement (second) of Torts. Under Section 339 of the Restatement, it has been declared that liability exists if,

- *The place is one where children are likely to trespass;
- *A dangerous condition exists in such a place;



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- *The condition is likely to attract children;
- *The child does not understand the risk;
- *The burden of eliminating the danger is lesser compared to the risk;
- *The landowner fails to exercise such reasonable care, as expected of him in eliminating the risk.

72.I should say that the Indian Courts have not been as proactive as their English and American counterparts.

73.One example is the case of ***Madras and Southern Mahratta Railway Company Limited Vs. Jayammal, [AIR 1925 Mad 304]***.

74.The plaintiff was a girl aged about seven years. She was crossing the railway line at Walajah Road Railway Station. She crossed the line to reach her grandmother's house, and was returning with a basket full of grass. While returning home, she used the path near the wicket gate, which was close to the Assistant Station Master's house. An engine ran over her and she suffered injuries. Consequently, she sued the Railway



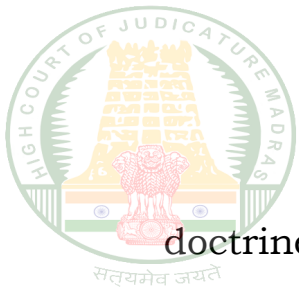
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Authorities for damages. The learned Single Judge (Coutts Trotter,J) awarded damages of Rs.3,500/-.

75. Aggrieved by the same, the Railways preferred an appeal. The Court of Appeal held that taking a short cut to one's residence is not an allurement. It confirmed that in so far as the child is concerned, the Government would be liable even for ordinary negligence, (i.e.,) which in the case of an adult would be mere negligence, but in the case of a child it would be regarded as a “trap”.

76. The Court, however, allowed the appeal holding that the proximate or effective cause of the accident was the negligence of the child in not looking for any passing engine in crossing the line, and that the child was capable of appreciating danger, as she possessed a sense of discrimination. They held the defendant - Railways was not guilty of negligence.

77. Subsequently, the principle of allurement and the



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doctrine of *res ipsa loquitur* were applied by the Delhi High Court

in **Kumari Alka Vs. Union of India, AIR 1993 Del 267**. It was

a case where a child aged about six years had suffered damages. Without knowing the implication and gravity of putting her hand into a running motor, she did so. As a consequence, she lost two fingers of her right hand. The defendants pleaded that they were not responsible. The Court refused to accept the plea of the defendants and held that since their premises were unfenced, unguarded, and unattended, and as the plaintiff was too young to appreciate the real danger of interfering with a working motor, and as her age was not sufficient to appreciate the “real” danger of what she was doing, the defendants were liable.

78.This principle yet again came to be applied in **Nitin Walia Vs. Union of India and others, AIR 2001 Del 140**. That was a case of a three year old child. He was taken to the National Zoological Park, Delhi for a visit. At that time, the child, being over-excited by the visit to Zoological Park, came to a cage containing a white tigress. The cage was made of iron bars, but

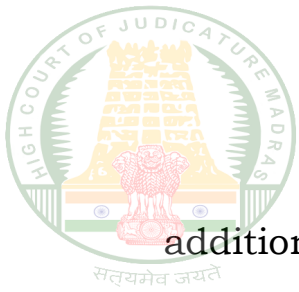


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had gaps in between each bar. The tigress, all of a sudden, bit the right hand of the child through the railings. Despite the efforts of the Doctors, the hand could not be saved, and had to be amputated.

79. Aggrieved by the same, the child claimed damages to the tune of Rs.7,10,000/-. The Trial Court granted compensation of Rs.40,000/-. Aggrieved by the same, an appeal was preferred before a Division Bench. The Division Bench held that the National Zoological Park ought to have installed iron meshes around the rods of the cage, which would thereby have prevented the tigress from reaching out to the child. Since that had not been done, the Court applied the principle of *res ipsa loquitur* and granted a compensation of Rs.5,00,000/-, together with interest at the rate of 12% per annum.

80. A survey of these authorities shows that apart from the normal level of caution that one ought to exercise, when it comes to children, those responsible for them have a duty to take



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additional care to ensure that the children do not suffer any damages on account of their lack of care. A casual attitude which might not attract any liability when it comes to adults, who are capable of taking care of themselves, can be a fundamental fact to be held liable for negligence when the person affected is a child. It is only natural that children will be allured to visually attractive or tempting articles. In this case, it was the glistening and lustrous waters of Mother Cauvery. The teachers ought to have exercised greater care and caution while permitting the students to enter the waters. Had they done so, the necessity for this writ petition would not have arisen.

Is the State liable for the negligence of the teachers:

81. Vicarious liability is legal responsibility imposed on an employer, although he is himself free from blame, for a tort committed by his employee in the course of his employment. The reasoning is pretty simple because the respondents owe a duty of care towards the children. That duty of care was to take all



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reasonable steps to safeguard the children from any foreseeable

harm. In carrying out the duty of care, the school, being an institution of the Government, necessarily had to employ responsible teachers. These teachers had a duty to report to the school authorities regarding any harm that they should have perceived as having occurred or as likely to occur to any of the children in their care, with a view to them carrying out further their duty of care in taking remedial or preventive steps. Failing to do so would unquestionably be a failure to carry out a duty which they owed generally and specifically to each child under their care.

82.It is here that I will again refer to **M.S.Grewal's** case referred to *supra*. The Court held as follows:

“18.Be it noted that the doctrine of “vicarious liability” has had a fair amount of judicial attention in the English courts. By the end of the 18th century, the idea began to grow that some special importance ought to be attached to the relationship of master and servant and in 1849 it was officially held that



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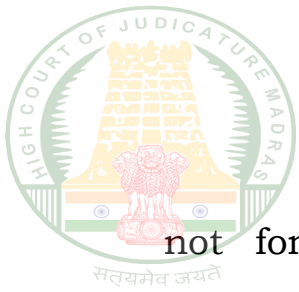


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existence of that relationship was essential. Thereafter, though primary liability on the part of anyone could be established on proof of direct participation in the tort, such direct participation was not even theoretically required to make a master liable for his servant's torts. The liability is derived from the relationship and is truly vicarious. At the same time, the phrase "implied authority" which had been the cornerstone of the master's primary liability gives way gradually to the modern "course of employment" (vide Winfield and Jolowicz on Tort, 15th Edn.)."

83.I respectfully adopt the view taken by the Supreme Court. The facts in M.S.Grewal's case are more or less identical to the facts of the present case. After a detailed discussion on several case laws, the Supreme Court finally concluded that the school is responsible for the loss that has occasioned to the parents of the children.

84.The children were not handed over to strangers by their parents. The respondents 11 to 13 were teachers of the school. If



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not for the relationship between the respondents and the

WEB institution, the parents would not have handed over the custody of the children to them. The teachers should have acted in a responsible manner ensuring the safety and security of the students. The teachers did not participate in the sports event. Their only role was to act as an escorts. Unfortunately, they failed in this duty. Had the teachers ensured discipline and safety, the children would not have lost their lives. As the school is a Government school, the Government has to be held vicariously liable.

Doctrine of loco parentis

85.School authorities and the Government are subject to vicarious liability because they stand, to a certain extent, in relation to their pupils or students, *in loco parentis* or substitute parents. Consequently, when parents send their minor child to school or to any event organised under the aegis of the school, they must necessarily pass on or share their parental authority, their custody over the child, and the responsibility to take care of



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the child over to the school authorities as the latter shall assume

such during all the time the child is under their supervision and instruction. This, in essence, is the principle of substituted parental authority. A teacher's liability arises from the failure to provide due diligence in the performance of the responsibilities that come with the substituted parental authority. A teacher must not only be charged with the teaching, but also for vigilance over their students or pupils. Without the parents to look after their children, it is the teacher who assumes the responsibility of supervision. It is thus fitting that the basis of a teacher's liability is the principle of *in loco parentis* which, according to Black's Dictionary, means "in the place of a parent".

86.The law holds the teachers and heads of the school staff liable unless they can relieve themselves of such liability by proving that they observed all the diligence to prevent injury and death. This applies to all types of educational institutions, academic or vocational. The contract between a school and the student is one imbued with public interest, although it remains a



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contract nonetheless.

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87. Normally if the facts are in dispute, the parties must be referred to the civil courts for the purpose of assessment of negligence, as well as to the determination of quantum of compensation. However, if the facts are not in dispute, or can be culled out from the affidavit and counter, then as a constitutional court, this Court has the power to award damages as the act falls within the domain of Constitutional Courts. A few examples include unauthorised detention of a person by a State Actor, death under custody of police official, electrocution due to negligence by statutory authorities, among others.

88. In this case, the writ petitioners, being the parents of the four deceased children, handed over the custody of the children to the teachers. As is clear from paragraph 7 of the counter affidavit filed by the second respondent, it is not in dispute that the 11th respondent along with 15 children went to Mayanoor, near Chellandiamman Koil, to have a bath in the Cauvery river.



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One aspect not disclosed in the affidavit, but revealed out during the course of arguments, sheds further light. The daughter of the 11th respondent was also a part of the 15 children who went to take a bath. The sparkling water of the Cauvery, by its very nature, would have been alluring to the children, but as a parent, the 11th respondent ought to have refused the request of the children to have a bath. In the light of the above conclusion, I now turn my attention to the issue of quantum of compensation payable.

Quantum of Compensation:

89.The learned counsel for the petitioners requested the Court to apply the principles relating to the multiplier method under the Motor Vehicles Act.

90.The Supreme Court speaking through Justice V.Gopala Gowda in ***Dr.Balram Prasad v. Kunal Saha & others, (2014) 1 SCC 384*** directed that the court should be extremely cautious,

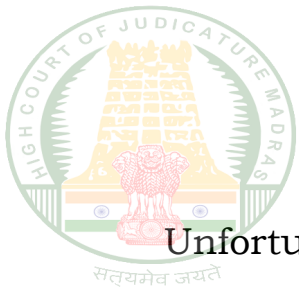


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and not to allow across the board application of the multiplier method. The Supreme Court held that the court must determine the compensation which is just, fair, and reasonable. Therefore, the arguments of the petitioners that I should apply multiplier method to determine and grant compensation does not appeal to me.

91.The children were aged between 11 and 13 at the time of their death. The Government of Tamil Nadu had immediately released a sum of Rs.2,00,000/- from the Chief Minister's Relief Fund. The loss of a child cannot be adequately compensated in monetary terms. Unfortunately, law is yet to develop any other method by which a grieving parent can be given solace for the loss of a loved one.

92.The children seem to have been bright and that is the reason why they were chosen by the school for the tournament. If not for the incident, maybe the children would have grown up into bright stars adorn the history of this glorious country.



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Unfortunately, Mother Cauvery intervened and their lives were

snuffed out.

93.If I were to apply the multiplier method, it would amount to varying compensation for each of the petitioners. The pain and suffering that the writ petitioners have undergone would have been more or less the same. Therefore, in the light of the judgment of the Supreme Court in **Balram**'s case and in the light of this reasoning, I am not inclined to adopt the said method.

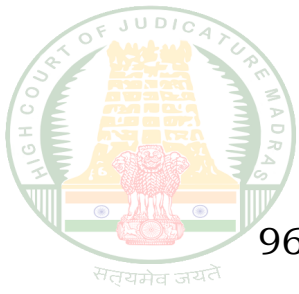
94.Before I bring the curtains down on this case, I have to point out that from February 2023 onwards, the respondents 11 to 13 have been under suspension. The 13th respondent has attained the age of superannuation but has not yet been permitted to retire. The disciplinary enquiry has not been initiated against respondents 11 to 13. A teacher has utmost love and affection for the children. No teacher would have wished that a child placed in his or her custody suffer such a fate in the



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clear, yet, the deep waters of Mother Cauvery. Alas, she had different plans. They have been negligent which resulted in this writ petition. The second respondent shall complete the disciplinary enquiry initiated against the respondents 11 to 13 at an early date, taking a sympathetic view of the circumstances, and pass appropriate orders.

95.I feel a just and fair compensation of Rs.15,00,000/- each payable by the first respondent would be just and reasonable. This would not be in excess and I feel it would be just and fair. However, compensation for the death of a child should not result in an unintended windfall. The Government has already granted two lakhs soon after the incident. Reducing this amount from the aforesaid figure, the first respondent shall pay a sum of Rs.13,00,000/- each together with interest @ 7.5% per annum from the date of incident till the date of payment to the petitioners 1 to 4. This compensation shall be paid to each of the writ petitioners within a period of four weeks from the date of uploading a copy of this order on the website of this Court.



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96. With the above observations, this writ petition stands allowed. The petitioners will be entitled to a cost of Rs.10,000/- each. This amount shall be paid equally by the respondents 11 to 13, and not by the respondents 1 to 10. Consequently, the connected miscellaneous petitions are closed.

01.07.2025

lm / nl / krk

Index : yes / no

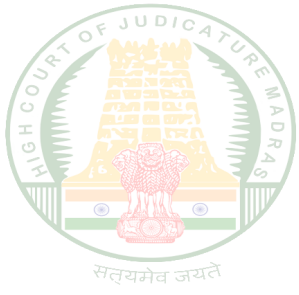
Neutral Citation : yes / no

Internet : yes / no

Speaking / Non Speaking Order

To

1. The Principal Secretary,
School Education Department,
Fort St. George, Chennai.
2. The Director of School Education,
The Director of School Education Office,
College Road, Chennai.
3. The District Collector,
Office of the District Collector, Karur District.
4. The District Collector,
Office of the District Collector, Pudukottai District.
5. The Superintendent of Police,
Office of the Superintendent of Police, Karur District.



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W.P.(MD).No.14252 of 2023

V.LAKSHMINARAYANAN, J.

lm / nl / krk

- 6.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Kulithalai, Karur District.
- 7.The Tahsildar,
Ilupur Taluk, Pudhukottai District.
- 8.The Block Development Officer,
Viralimalai, Ilupur Taluk, Pudhukottai District.
- 9.The Inspector of Police,
Mayanoor Police Station, Karur District.
- 10.The Head Master,
The Government Middle School,
Pilipatti Panchayat Union,
Viralimalai, Pudhukottai District.

Pre-delivery order in

W.P.(MD).No.14252 of 2023

01.07.2025