

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.2721 of 2017

Tamil Selvi

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Secretary,
Health Department,
Fort St.George,
Chennai - 600 009.
- 2.The Deputy Director of Health
Services,
Multipurpose Female Training
Campus,
Viswanathapuram, Madurai - 615 014.
- 3.The Dean, Government Rajaji Hospital,
Madurai, Madurai - 625 001.
- 4.The Joint Director, Health Service,
Government Head Hospital,
Virudhunganar - 626 001.
- 5.The Medical Officer,
Government Head Hospital,
Aruppukottai, Panthalkudi Road,
Aruppukottai - 626 101,
Virudhunagar District.
- 6.The District Collector,
Collector Office,
Virudhunagar District - 626 002.
- 7.The Inspector of Police,
Aruppukottai Town Police Station,

Virudhunagar District - 626 101.

8. Dr. Manjuparkavi, Pediatrician,
Regn.No.64304, Government Head
Hospital, Aruppukottai,
Panthalkudi Road,
Aruppukottai - 626 101,
Virudhunagar District.

9. Dr. Rohini, Anesthetist,
Government Head Hospital, Aruppukottai,
Panthalkudi Road,
Aruppukottai - 626 101,
Virudhunagar District.

10. Dr. Annadurai, ENT Surgeon,
Regn.No.51487,
Government Head Hospital, Aruppukottai,
Panthalkudi Road,
Aruppukottai - 626 101,
Virudhunagar District.

11. The Director of Medical Services,
Chennai. ... Respondents
R11 is suo motu impleaded
vide Court order dated 25.01.2021).

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 6 to pay a just and reasonable compensation of a sum of Rs.20,00,000/- (Twenty Lakhs Rupees) to the petitioner for the death of the petitioner's daughter Sangeetha who died on 05.07.2016 consequent to the cursory negligent treatment given by the respondents 8 to 10 at the fifth respondent Government Hospital.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.C.Ramar,
Additional Government Pleader
for R1 to R7 and R11

Mr.T.Lajapathi Roy
for Mr.C.Prithviraj
for R8 to R10

ORDER

Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the official respondents and the learned counsel for the private respondents.

2.The petitioner's daughter Sangeetha aged about eight years was suffering from tonsils. She was admitted in Government Hospital, Aruppukottai on 07.04.2016 for treatment. The child was examined and it was suggested that she must undergo surgery. She was an inpatient on 13.04.2016 for this purpose. For preparing the child for surgery, anesthesia was administered by the 9th respondent Anesthetist. Unfortunately, the child developed some complications and she was shifted to Rajaji Government Hospital, Madurai for further treatment. The child went into coma and eventually passed away on 05.07.2016. Alleging that the death of the child was purely due to medical negligence on the part of the private respondents, the petitioner has filed this writ petition demanding payment of compensation.

3.The prayer made in the writ petition is opposed both by the official respondents as well as the private respondents. They have also filed their counter affidavits.

4.I carefully considered the rival contentions and went through the materials on record. There is no dispute that the petitioner's child was admitted only for the purpose of tonsil surgery and nothing else. It is also not in dispute that even before the surgery could be performed on the child, the child developed complications following the administration of anesthesia. The learned counsel for the petitioner would strongly allege that but for the negligence on the part of the anesthetist and other doctors, the child would not have died.

5.The issue of medical negligence requires a factual determination. It is seen that following the complaint lodged by the petitioner, an enquiry was in fact conducted. The report was submitted by four member enquiry committee on 17.06.2016. It clearly states that there was no medical negligence on the part of the doctors. Then, the question arises as to how the death

had occurred. It appears that the child was administered a drug known as Propofol.

6.The learned counsel for the private respondents has made available the literature on the subject. It is seen therefrom that the propofol is not an intrinsically dangerous drug and it is very much administered to children above 3 years of age. It states however that there may be implications for children with mitochondrial diseases. There is nothing on record to indicate that the deceased child had the said disease and that it was omitted to be noticed by the doctors in question.

7.There are always instances when a drug does not accord with the body of the patient and that leads to unfortunate complications. The case on hand appears to be one such. Therefore, I do not find any ground to hold that the respondent anesthetists have committed any act of medical negligence.

8.Even though I may reject the allegation of the petitioner as regards medical negligence, still, there is no answer to the question regarding compensation. The

petitioner belongs to Hindu Pallar community. It is a notified scheduled caste community. Her child was admitted in a Government Hospital for tonsil surgery. The learned counsel for the respondents would state that such surgeries are regularly performed in Government Hospital, Aruppukottai. The petitioner's child should have been discharged after successfully conducting surgery. But what the petitioner got was only the dead body of her child. Neither the petitioner nor her child was at fault. When a patient is admitted in a government hospital for treatment and he/she suffers any injury or death which is not anticipated to occur in the normal course of events, even in the absence of medical negligence, the government is obliged to disburse ex-gratia to the affected party. In the case on hand, liability has to be fastened on the government. Since the institution happens to be the Government institution, the Government of Tamil Nadu will have to necessarily take consequence. My attention is drawn to G.O(Ms)No.395 dated 04.09.2018 whereby a corpus fund has been created by the Tamil Nadu Government. It appears that every Government doctor contributes certain sum of money towards this corpus fund and whenever compensation is

directed to be paid by the courts, amount will be drawn from this fund and paid. Considering the overall circumstances, I am of the view that the petitioner deserves to be paid a sum of Rs.5.00 lakhs as compensation. The said amount shall be paid by the department/Government from the said fund. Such payment will be made to the petitioner within a period of eight weeks from the date of receipt of copy of this order. Since the enquiry conducted by the department itself had exonerated the private respondents from any charge of negligence, the question of recovering the said amount from their salary will not arise.

9. The writ petition is allowed on these terms. No costs.

01.02.2021

Index : Yes / No

Internet: Yes/ No

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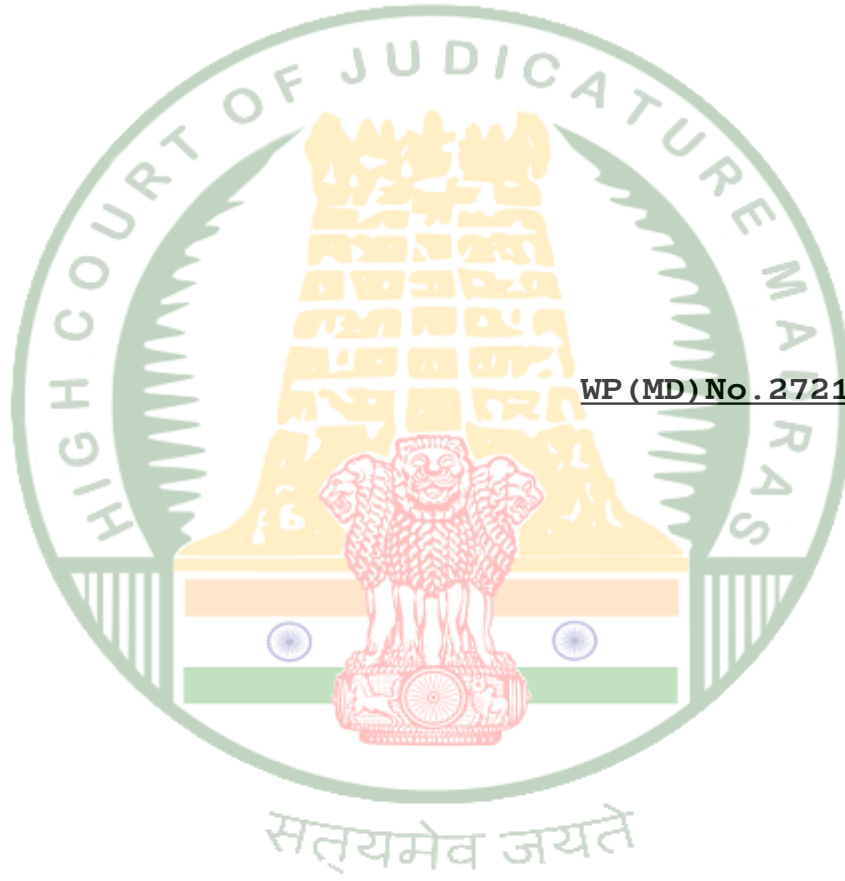
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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G.R.SWAMINATHAN, J.

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