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W.P.No.26460 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 20.07.2022

PRONOUNCING ORDERS ON : 22.07.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.26460 of 2007

S.Bhanupriya

..Petitioner

.Vs.

1.The State of Tamilnadu
Rep.by the Secretary
Public Department
Fort St.George
Chennai 600 009.

2.The Director
Medical and Rural Health Services
DMS Compound
Teynampet, Chennai 600 001.

3.Mettupalayam Govt.Hospital
Rep.by the Chief Medical Officer
Mettupalayam.

4.Dr.Thamilselvi
Medical Officer
Mettupalayam Govt.Hospital
Mettupalayam.

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent to pay a sum of Rs.10,00,000/- to the petitioner as Compensation and consequentially direct the 2nd respondent to initiate appropriate disciplinary action against the 4th respondent.



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For Petitioner : Ms.Poongkhulali
for Mrs.D.Geetha

For Respondents : Mr.T.K.Saravanan
Government Advocate
for R1 & R2

Mr.N.Damodaran
for R3

ORDER

The instant Writ Petition has been filed by a mother seeking for compensation from the respondents for the physical pain and mental agony underwent by her for a period of nearly nine months after delivering a child in the 3rd respondent hospital, due to the alleged negligence on the part of the respondents.

2.The case of the petitioner is that she was admitted in the 3rd respondent hospital on 4.11.2005 and she delivered a baby boy on the same day at about 12.30 PM. The 4th respondent doctor performed the delivery and she had to use the forceps, since there was a last minute complication and it required stitches. From 5.11.2005 onwards, puss was oozing from the surgical scars and the petitioner was experiencing difficulty in urinating and defecating. On 9.11.2005, the stitches were undone by the 4th respondent and she redid the stitches on the same day.

3.The situation did not improve for the petitioner and on 10.11.2005, Dr. Ilanchezian examined the petitioner and he used catheter to remove the puss and it was informed that

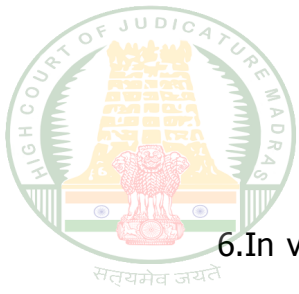


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the said doctor will perform the second surgery. The further case of the petitioner is that the situation was not improving for the petitioner and the puss was oozing and dribbling down the legs and she was undergoing extreme pain and hardship. Since there was no progress till 15.11.2005, the husband of the petitioner decided to get the petitioner discharged from the 3rd respondent hospital. The 4th respondent informed that the petitioner has to wait for the second surgery to be performed by Dr. Ilanchezian and since he was not readily available, the petitioner was asked to wait. However, the husband of the petitioner was not able to take it anymore and he insisted for the discharge of the petitioner and the petitioner was discharged on 16.11.2005.

4.The petitioner was thereafter rushed to a private hospital and at which point of time, the petitioner was informed that her rectum had been injured due to the use of forceps and since it has not been stitched and treated properly, it got infected. Immediately, steps were taken to perform a surgery. The private doctor informed the petitioner that a three stage surgery would be needed to perfectly address the problem.

5.The first surgery was performed on 20.11.2005. Thereafter, the left leg of the petitioner began to swell and hence, the petitioner was admitted in the vascular care centre for nearly 15 days. The petitioner had to wait till the swelling subsided. Ultimately, the second surgery was performed during May 2006 and the third surgery was performed during July 2006.



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6. In view of the above facts, the petitioner claims to have spent nearly Rs. 1.5 Lakhs towards surgery expenses and she was also forced to spend money towards medicine, rent and travel expenses. That apart, the petitioner was not able to take care of her new born child for nearly nine months. In view of the same, the petitioner has sought for compensation against the respondents and she has also sought for taking action against the 4th respondent for her negligence in performing the operation. The second limb of the relief sought for by the petitioner becomes infructuous since the 4th respondent died during the pendency of this Writ Petition. Hence, this Court has to consider only the issue of negligence and the consequent payment of compensation.

7. The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder :

“8. It is humbly submitted that Fourth Respondent herein was leave 13.11.2005. Another Gynaecologist namely Dr. Vijayanthi found that the wound of the patient again broken down and it turned cut and then she called the surgeon immediately. The patient was examined by the surgeon on the same day. After examination of the wound of the patient, the Surgeon opined that the skin and muscle was infected and the patient put on antibiotics and the wound be re-sutured only after 15 days, after controlling the infection. This opinion communicated to the patient's husband immediately (i.e) on 13.11.2005. On 16.11.2005 it was informed to the patient's husband that patient may be taken to Coimbatore



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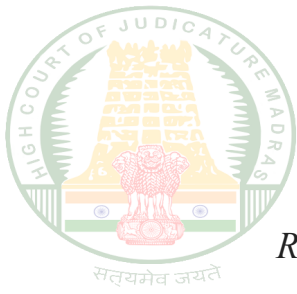
Medical College Hospital, Coimbatore for the further treatment where the experts are available with good intention. But, the patient and her husband ignored the advice of the Doctor and chosen to go to a private Hospital. At their request, the patient was discharged from Government Hospital, Mettupalayam on 16.11.2005. These facts distinct that no negligence on the part of the third and fourth respondent.

9. I respectfully further submit that patient and her husband ware independently chosen to go for treatment at private Hospital. For their own decision, put allegations on the Government Hospital and the Doctor who gave treatment to her is unfair and unethical.

10. I further submit that negligence committed by the patient and her husband. In order to hide their mistakes preferred this writ petition and seeking compensation and action on the doctor who gave treatment to her with good intention. Therefore, the contention of the petitioner against the Government Hospital and the Doctor is unfair and unethical.

11. I submit that the documents submitted by the petitioner in the type set along with this writ petition are the concrete documentary evidence that there no negligence on the part of the Government Hospital and the Doctor who gave treatment to the petitioner.

12. I humbly submit that the Joint Director or Health Services, Coimbatore @ Tiruppur has submitted inquiry report to the District Collector, Coimbatore Vide their Letter



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Ref.No.2239/E8/2005 Dated: 21.09.2006. In this inquiry report, the Joint Director of Health Services, Coimbatore @ Tiruppur has been mentioned as follows:

"In my opinion there is a possibility of occurrence of complete perineal tear in the patient Mrs.Banupriya which can be treated and managed at Coimbatore Medical College Hospital, Coimbatore where there were enough facilities available.

Under the above enough circumstances and on the basis of the opinion statement submitted the by the expert doctors I am to conclude that

No negligence is noticed on the part of Doctors who gave treatment to the patient and hence the question of rendering financial remedy to the petitioner does not arise."

8.The 3rd and 4th respondents have also filed counter affidavits. Since they have taken a similar defence, it will suffice to take note of the counter affidavit filed by the 3rd respondent and the relevant portions are extracted hereunder:

"5. It is respectfully submitted that after delivery of the baby, the episiotomy was sutured well and the patient's pulse rate and B.P. was good and the patient was then treated with antibiotics. The petitioner started passing urine freely for four days and also passed motion and her wound was clean until then. While so when on the fifth day that is on 09.11.2005 when the doctor concerned examined the patient's wound so as to discharge her, it was found there was a breakdown of muscle



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and skin layer which is a common complication for any surgical procedure depending upon the health and hence the fourth respondent put the patient on higher antibiotics and re-sutured the wound. Such repaired wound sometimes breaks down more than once, inspite of efficient and meticulous efforts requiring repeated repairs because of poor resistance power of the patient and proximity of the wound to anus which leads to all infections with known and unknown bacteria, some of which are resistant to all available antibiotics.

6.It is respectfully submitted that after re-suturing, the petitioner passed urine and motion freely through proper passages. While so she came to know, that when the doctor concerned was on leave on 13.11 2005, another gynaecologist Dr. Vijayanthi found that the wound of the petitioner was again broken down and it turned out to be complete perineal tear. The said doctor, it seems immediately called surgeon Dr. Ilanchezhian a surgeon who was in the same hospital.

7. It is respectfully submitted that the said doctor after examination of the wound of the patient gave his opinion that as the skin and muscle was infected, the patient be put on antibiotics and the wound be re-sutured only after 15 days after controlling the infection. The said surgeon also advised the duty Doctor to refer the patient to Coimbatore Medical College Hospital, the higher centre of treatment to get expert and adequate treatment. The opinion of the said surgeon was also communicated to the petitioner's husband.



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8. *It is respectfully submitted that on 16.11.2005, when the doctor concerned was insisted the petitioner's husband that the patient may be taken to Coimbatore Medical College Hospital, Coimbatore for further treatment where experts are available, the petitioner's husband refused to heed to the advice of the doctor concerned and insisted for discharging the patient and hence having no other go, the doctor concerned discharged the patient on the said day."*

9. Heard Ms.Poongkhulali, learned counsel for the petitioner, Mr.T.K.Saravanan learned Government Advocate for R1 and R2 and Mr.N..Damodaran, learned counsel for R3

10. The learned counsel for the petitioner submitted that there was negligence on the part of the 4th respondent since she did not take due care while performing episiotomy and as a result of the same, there was damage/rupture of the anus resulting in unbearable suffering for the petitioner. The learned counsel further submitted that the 3rd respondent hospital was not taking immediate steps to treat the infected portion and from 5.11.2005 onwards, the petitioner was made to face unbearable pain and hardship till 16.11.2005 and the husband of the petitioner was forced to discharge her and give her treatment in a private hospital. As a result of the negligence of the 3rd respondent hospital, the petitioner had to undergo three operations thereafter and also undergo treatment in a vascular care centre. In view of the same, the petitioner was forced to bear huge expenses and the petitioner was not even in a position to take care of her child for nearly nine months. The learned counsel therefore



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submitted that this is a fit case where the respondents must be directed to pay compensation for their negligence.

11.Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the 4th respondent was forced to adopt episiotomy as a surgical procedure in order to create space for the delivery of the baby. After the delivery, it was sutured well and the petitioner was treated by giving her antibiotics. Thereafter, there was a complication which is common in any surgical procedure and hence, the wound was re-sutured. The petitioner was also given higher antibiotics. Unfortunately, the suture once again gave way and it was diagnosed that there was complete perineal tear. Since there was an infection, the petitioner was put on antibiotics and the 3rd respondent waited for the infection to get controlled and thereafter, to perform the operation. The husband of the petitioner was also advised that the surgery can be done at the Coimbatore Medical College Hospital. However, since the husband of the petitioner insisted for discharge and refused to heed to the advice, the 3rd respondent had to discharge the petitioner. The learned Government Advocate therefore submitted that there was absolutely no negligence on the part of the respondents and the present Writ Petition is liable to be dismissed. The learned Government Advocate in order to substantiate his submissions, relied upon the following judgments:



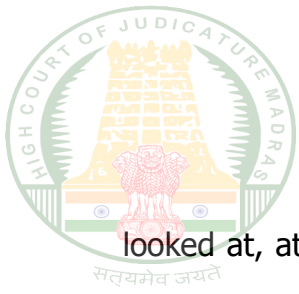
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1. *Dr. (Mrs.) Chanda Rani Akhouri and others* reported in 2022 SCC OnLine SC 481.
 2. *S.K. Jhunjhunwala Vs. Dhanwanti Kaur and Another* reported in (2019) 2 SCC 282.
 3. *Kusum Sharma and Others* reported in (2010) 3 SCC 480.
 4. *Martin F.D'souza Vs. Mohd. Ishfaq* reported in (2009) 3 SCC 1.
 5. *Jacob Mathew Vs. State of Punjab and Another* reported in (2005) 6 SCC 1.

12.This Court has carefully considered the submissions made on either side and the materials available on record.

13.This Court must bear in mind that while considering the grant of compensation in exercise of jurisdiction under Article 226 of the Constitution of India, this Court must be careful enough not to get into serious factual disputes which would require examination of witnesses and such cases can only be agitated before a Competent Civil Court. This Court must venture to decide on the questions of negligence and payment of compensation only in cases where it can be determined on the basis of the materials available before the Court and the same will not involve any appreciation of evidence.

14.This Court must also bear in mind the parameters fixed by the Apex Court while deciding the issue of negligence. In the present case, the issue of negligence has to be



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looked at, at two stages. The first stage was when the episiotomy procedure was performed by the 4th respondent. The second stage is when the wound started getting infected and whether the 3rd respondent hospital was negligent in taking care of the petitioner till 16.11.2005, when the petitioner was discharged against advice. The judgments that were relied upon by the learned Government Advocate pertains to the parameters to be applied by the Court while determining the negligence of a doctor, who performs a procedure or a surgery. The Apex Court has repeatedly held that a medical practitioner cannot be held to be negligent just because something went wrong while performing the procedure or surgery, in spite of the best efforts put in by the doctor and the doctor had exercised a reasonable degree of care, skill and knowledge as is expected under normal medical standards.

15. In the present case, the 4th respondent had to perform episiotomy, which is a regular procedure adopted in normal vaginal deliveries. In this procedure, an incision is made on the vagina of the patient to make space at the outlet bigger for the baby to come out comfortably and to make the birth easier and in order to avert a possible brain damage for the baby. On carefully going through the medical literature, it is seen that *"it is common for the perineum to tear to some extent during childbirth. Tears can also occur inside the vagina or other parts of the vulva, including the labia. Up to 9 in every 10 first time mothers who have a vaginal birth will experience some sort of tear, graze or episiotomy. It is slightly less common for mothers who have had a vaginal birth before. For most women, these tears are minor and heal quickly."*



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16.It is clear from the above that the 4th respondent was forced to adopt this procedure since the baby's head was at the outlet and was not able to come out and the petitioner was not able to strain any further. That apart, the fetal heart rate was decreasing and in order to save the baby, the 4th respondent applied outlet forceps after giving episiotomy, whereby, the perineum was cut down to create space for the delivery of baby. This procedure adopted by the 4th respondent cannot be held to be negligent and she had taken the decision in the interest of the petitioner and her baby.

17.The next issue that has to be gone into is as to whether a complete perineal tear that resulted after the performance of the procedure, can be held to be negligence on the part of the 4th respondent. On going through the medical literature, it is seen that a perineal tear is not uncommon after an episiotomy procedure. In fact, there is a possibility of 4 degrees of perineal tear.

- ***“First-degree*** - Small tears affecting only the skin which usually heal quickly and without treatment.
- ***Second-degree*** - Tears affecting the muscle of the perineum and the skin. These usually require stitches.
- ***Third- and fourth-degree tears*** - For some women (3.5 out of 100) the tear may be deeper. Third- or fourth- degree tears, also known as obstetric anal sphincter injuries (OASI), extend into the muscle that controls the anus (anal sphincter). These deeper



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tears need repair in an operating theatre”.

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18.It is clear from the above that complete perineal tear that resulted from the procedure, cannot be held to be negligence on the part of the 4th respondent doctor. The enquiry report of the Joint Director of Health Services, dated 21.9.2006, was placed before this Court. While giving this report, the expert opinion of three doctors have been obtained. They have opined that such complete perineal tear is a possibility and in all such cases, the patient is put on antibiotics and the re-suture is done only after the healing of the tissues. The Joint Director has also opined that a complete perineal tear is always a possibility in certain cases of forceps delivery.

19.In view of the above, this Court has to necessarily take into consideration the medical literature and the opinion given by experts, since this Court is not an expert in the field of medicine and this Court does not have the expertise to hold that the procedure performed on the petitioner by the 4th respondent resulting in the complete perineal tear was as a result of insufficient care taken by the 4th respondent.

20.This Court has to now consider as to whether there is negligence on the part of the 3rd respondent, in not taking proper care of the petitioner for the period from 5.11.2005 to 16.11.2005. It is true that the petitioner was experiencing extreme pain and was also put to a lot of discomfort due to the oozing of puss and the bad smell it was emanating. It is clear from the records that her rectum was cut/injured due to the use of forceps. This resulted in



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difficulty in urinating and defecating, according to the petitioner. The respondents have taken

a stand to the effect that the petitioner was passing urine and motion freely till 9.11.2005.

Thereafter, there was a breakdown of muscle and skin layer and according to the 3rd respondent, the wound was re-sutured and the petitioner was passing urine and motion freely. Once again on 13.11.2005, there was a breakdown and it was only at that point of time, it was diagnosed as a complete perineal tear. One, Dr. Ilanchezian was immediately called and he, after examining the wound gave an opinion that the petitioner must be put on antibiotics and the wound can be re-sutured only after the infection is controlled. The experts who had given their opinion have opined that re-suture will be normally done only after the tissues heal.

21.The husband of the petitioner was not able to see his wife suffering with pain and facing hardship. Hence, the petitioner was discharged against advice on 16.11.2005. According to the respondents, the husband of the petitioner was advised that the petitioner can be referred to the Coimbatore Medical College Hospital, for expert advice and treatment and this advice was not taken by the husband of the petitioner. The petitioner has taken a very specific stand that the 4th respondent refused to discharge the petitioner and she was asked to wait till Dr. Ilenchezian returned back after his leave. The petitioner or her husband do not admit to the fact that they were advised to be shifted to the Coimbatore Medical College Hospital. Even in the discharge summary, there is absolutely no reference to the effect that the petitioner was referred to the Coimbatore Medical College Hospital. It only states that the patient was discharged at request. Even when the husband of the petitioner



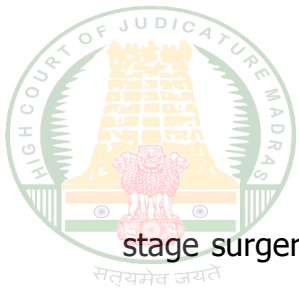
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was examined at the time of enquiry, he categorically states that the petitioner was asked to take treatment in the same hospital and that a doctor will come from the Coimbatore Medical College Hospital.

22.In the considered view of this Court, the 3rd respondent hospital was expected to take effective decisions since the situation faced by the petitioner could not be effectively handled in the 3rd respondent hospital. This became apparent even on 13.11.2005, when the petitioner was diagnosed with a complete perineal tear. At that point of time, immediate steps must have been taken by the 3rd respondent to shift the petitioner to the Coimbatore Medical College Hospital. This decision does not require the consent of the petitioner or her husband. The interest of the patient gains significance and to waste time for 3 more days till 16.11.2005, virtually gave an impression in the mind of the husband of the petitioner that effective steps are not being taken to treat the petitioner and he was a witness to the pain and agony undergone by his wife.

23.If really, the petitioner had to wait till the entire wound is healed to perform the re-suture, it is quite curious to note that the first surgery was performed on the petitioner in the private hospital on 20.11.2005, which is within four days from the date of discharge from the 3rd respondent hospital.

24.The medical certificate that has been given by the private hospital shows that the petitioner had to undergo a three stage surgery to address the tear of the rectum. The first



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stage surgery was colostomy, the second stage surgery was CPT- repair and the third stage

surgery was colostomy closure. The first stage of surgery was undergone by the petitioner

within four days after the discharge from the 3rd respondent hospital. This situation could

have been averted by the 3rd respondent hospital by immediately shifting the petitioner to

the Coimbatore Medical College Hospital atleast on 13.11.2005 and all these procedures

could have been done in that hospital. The delay on the part of the 3rd respondent which

caused anxiety to the husband of the petitioner, should necessarily be held to be negligence

on the part of the 3rd respondent hospital. The 3rd respondent hospital, after having realised

that the petitioner cannot be given adequate care in the hospital, should have immediately

shifted the petitioner to the Coimbatore Medical College Hospital. If this was not done and

the 3rd respondent was waiting for the arrival of a doctor who had gone on leave, the

petitioner cannot continue to face pain and agony and under the given circumstances, the

husband of the petitioner thought it fit to shift the petitioner to a private hospital. In fine,

this Court holds that there was a clear negligence on the part of the 3rd respondent hospital

for not having taken proper care of the petitioner and for having failed to shift the petitioner

to Coimbatore Medical College Hospital when the situation really warranted.

25.The upshot of the above discussion leads to the conclusion that the 3rd respondent hospital must be held liable for negligence and the petitioner is entitled for payment of compensation by the 1st respondent since the Government is vicariously liable for negligence on the part of the Government hospital.



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26. The petitioner was admitted four times in the hospital to undergo three surgeries and to recover for her swelling of leg, in a vascular care centre. In this process, the petitioner was forced to spend towards surgery expenses, medicine expenses, travel expenses and also rental expenses, when they were forced to stay at Sathyamangalam, till all the three surgeries were completed. That apart, the petitioner also faced untold hardship in not being able to take care of her new born baby effectively for nine months. In view of the same, this Court is inclined to fix a lumpsum compensation of Rs. 5 Lakhs payable to the petitioner.

27. In the result, this Writ Petition is allowed and there shall be a direction to the 1st respondent to pay a compensation of Rs.5 Lakhs (Rupees Five Lakhs only) to the petitioner within a period of **six weeks** from the date of receipt of copy of this Order. No costs.

22.07.2022

KP
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Index: Yes



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To

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State of Tamilnadu
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Fort St.George
Chennai 600 009.
- 2.The Director
Medical and Rural Health Services
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N.ANAND VENKATESH. J.,

KP

**Pre-Delivery Order in
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