



W.P.(MD)No.12362 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.12.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.12362 of 2019

and

W.M.P(MD)No.9234 of 2019

Pandeeswari ... Petitioner
(Petitioner is substituted vide Court
Order dated 16.12.2022)

/Vs./

- 1.State of Tamil Nadu represented by
The Principal Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
- 2.The Director,
Director of Medical Education,
Government of Tamilnadu
Chennai-600 018.
- 3.The Chief Medical Officer,
Virudhunagar District Head Quarters Government Hospital,
Virudhunagar District.
- 4.The Dean,
Government Rajaji Hospital,
Madurai.



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5. The District Collector,
Office of the District Collector,
Virudhunagar District.

6. The Joint Director,
Medical and Health Services,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to pay fair and reasonable amount of compensation for the negligent surgery performed by the Respondent No.3 hospital, consequently to direct the respondent No.1 to take action against the respondent No.3 hospital officials, who are responsible for the negligent surgery to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For R1 to R6 : Mr.N.Ramesh Arumugam

ORDER

This writ petition has been filed for a direction directing the respondents to pay compensation for the negligence on the part of the third respondent hospital and also to take appropriate action as against the third respondent's hospital officials.



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WEB COPY 2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The petitioner was admitted in the third respondent hospital for her stomach pain. The third respondent advised to get for immediate surgery. Therefore, she was admitted in the third respondent hospital on 01.05.2019 for removal of uterus. On 02.05.2019 the surgery was conducted and removed her uterus. Thereafter, she was shifted to general ward. After recovering from the anesthesia, she felt heavy pain on her right leg. Though, it was informed to the doctors of the third respondent hospital, she was not given any treatment for her leg pain. But she seriously suffered from leg pain and she could not able to tolerate the pain, even though, the third respondent failed to bring the superspeciality senior doctors from the nearby medical college for the higher treatment. On 08.05.2019 one female doctor visited the the petitioner and shouted the nurse and doctors of the third respondent for the delay caused to bringing the super speciality doctors. Immediately, she was advised to take a scan. She was taken to private scan centre and had taken a scan. Even then, the scan report was not looked into by the superspeciality



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doctor since two days once the superspeciality doctor visited the third respondent's hospital. On 09.05.2019 one Speciality Medical Chief Doctor came from Madurai Rajaji Government Hospital and he examined the petitioner. He advised immediate transfer of the petitioner to Madurai Rajaji Hospital due to health condition of the petitioner. She got blood clot in her right leg and there is no blood circulation throughout the leg. Therefore, they decided to amputate her right leg completely. On 09.05.2019 she was taken to Madurai Rajaji Government Hospital and admitted as Inpatient in Ward No.336. Thereafter, a surgery was done and her right leg has been amputated. Now, she is unable to even walk, stand and to remove anywhere. If the third respondent hospital provided treatment in the right time, there would not be amputation of the petitioner's right leg.

4. On a perusal of the counter affidavit filed by the third respondent and also the submission made by the learned Government Advocate appearing for the respondents 1 to 6 revealed that the petitioner got admitted for abdominal pain on 01.05.2019 and on the basis of the scan report, her uterus was removed by surgery on 02.05.2019. After



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surgery, she was under observation and thereafter, she was completely normal and also walked her own. But on 06.05.2019 she requires A+ blood and it was transmitted to her. Thereafter, she was severe pain on her right leg and immediately, the Surgeon along with physician visited the petitioner. She was administered pain killer by injection and advised to take a scan. On a perusal of Doppler scan reported dated 08.05.2019 found that the Arterial Occlusion Vessel was blocked, it had happened to a diabetic patient. A vascular surgeon used to visit the third respondent hospital twice a week from Rajaji Government Hospital, Madurai. Therefore, on the visit of the Vascular Surgeon, on 09.05.2019 the scan report was shown and considering the condition of the patient, he suggested to shift her to Madurai Rajaji Hospital for higher treatment. Thereafter, she had undergone surgery and due to advise of the specialist surgeon her right leg was amputated and therefore, absolutely there is no medical negligence on the part of the third respondent hospital. That apart, the petitioner has to approach the Civil Court and it cannot be decided in the writ petition. It has to be gone into by letting in evidence.



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5. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.2641 of 2010 V.Kishan Rao v Nikhil Super Speciality Hospital and another.*** In which, the Hon'ble Supreme Court held that in complicated cases where expert evidence is required the parties have a right to go to the Civil Court for fixing the medical negligence. He also relied upon the another judgment reported in ***2022 Live Law (SC) 391 in Dr.Chanda Rani Akhourri & ors vs. Dr.M.A.Methusethupathi & ors.*** In which, the Hon'ble Supreme Court held as follows:-

*"23. In the case of medical negligence, this Court in ***Jacob Mathew v. State of Punjab and Another*** dealt with the law of medical negligence in respect of professionals professing some special skills. Thus, any individual approaching such a skilled person would have a reasonable expectation under the duty of care and caution but there could be no assurance of the result. No doctor would assure a full recovery in every case. At the relevant time, only assurance given by implication is that he possessed the requisite skills in the branch of the profession and while undertaking the performance of his task, he would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would only come if (a) either a person (doctor) did*



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not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess. It was held to be necessary for every professional to possess the highest level of expertise in that branch in which he practices. It was held that simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of the medical professional. This Court held as under:

“48. We sum up our conclusions as under:

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: “duty”, “breach” and “resulting damage”.



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(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of



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knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

*xxx xxx xxx (4) The test for determining medical negligence as **laid down in Bolam case [(1957) 2 All ER 118 (QBD), WLR at p. 586]** holds good in its applicability in India.*

xxx xxx xxx (8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.”

6. Therefore, the negligence on the liability can be fixed either a person did not possess the requisite skills which the doctor professed to



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WEB COPY have possess or the doctor did not exercise with reasonable competence in given case the skill which he did possess.

7. Therefore, there is no negligence on the part of the third respondent and the claim of the petitioner cannot be granted and prayed for dismissal of the writ petition.

8. On a perusal of the records revealed that the petitioner got admitted for her abdominal pain and advised to go for surgery to remove the uterus. Accordingly, surgery was done and her uterus was removed on 02.05.2019 thereafter, she suffered severe pain on the right leg, however it was not addressed by the third respondent. Only on 08.05.2019 the speciality doctor visited the third respondent's hospital and advised to go for scan since there was a vacant in the post of Radiologist and the petitioner was advised to go for private scan. In the private scan it was found that Arterial occlusion vessel was blocked, however, there is no speciality doctor for looked into the scan report. Only on 09.05.2019 the speciality had come from Madurai Rajaji Government Hospital and advised her for higher treatment. Thereafter,



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she had undergone surgery and due to which, her right leg has been completely amputated.

9. It is true that the issue on medical negligence requires the factual determination. However, admittedly, the petitioner suffered with untollerable pain on her right leg, even then, the third respondent failed to look into the pain even advised to go for higher treatment. Admittedly, the third respondent hospital did not have any speciality doctor and even the post of radiologist kept vacant. After a period of 6 days, she was advised to go for scan, that too, when the speciality doctor visited the third respondent hospital. Further, even after the scan report was not suggested for any consultation. She was asked to wait till the visitation of the speciality doctor from the Madurai Rajaji Government Hospital. Only on 09.05.2019 the speciality doctor from Madurai Rajaji Government Hospital had visited the petitioner and immediately advised for higher treatment at Madurai. By that time, the entire blood circulation was stopped and it requires amputation. The amputation was happened only due to delay on the part of the third respondent.



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10. Therefore, prima facie shows that only the negligence on the part of the third respondent hospital the petitioner's right leg got amputated and now she could not able to even stand or walk.

11. The similar issue was dealt with by this Court in ***W.P(MD)No. 2721 of 2017*** in the case of ***Tamil Selvi Vs. The state of Tamil Nadu and others***. This Court has held as follows:

“8.... 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 exgratia 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



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WEB COPY *will be drawn from this fund and paid. ...”*

12. G.O.(Ms)No.395, Health and Family Welfare (H1) Department, dated 04.09.2018 was issued and thereby, the corpus fund was created for the compensation in medical mishaps.

13. Accordingly, the first respondent is directed to disburse a sum of Rs.5,00,000/- (Rupees five lakhs only) as compensation to the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is made clear that there will not be any recovery from the concerned doctors and they are not liable for any charge of negligence.

14. In view of above observations and directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

05.12.2024

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
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To

- 1.State of Tamil Nadu represented by
The Principal Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
- 2.The Director,
Director of Medical Education,
Government of Tamilnadu
Chennai-600 018.
- 3.The Chief Medical Officer,
Virudhunagar District Head Quarters Government Hospital,
Virudhunagar District.
- 4.The Dean,
Government Rajaji Hospital,
Madurai.
- 5.The District Collector,
Office of the District Collector,
Virudhunagar District.
- 6.The Joint Director,
Medical and Health Services,
Virudhunagar District.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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