



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.08.2022

Pronounced on : 03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)No.20970 of 2021

N.Annamalai

... Petitioner

Vs.

- 1.The Union of India,
Rep.by Secretary to Government,
National Rural Roads Development Agency,
Ministry of Rural Development,
Krishi Bhavan, New Delhi.
- 2.The State of Tamil Nadu,
Rep.by the Secretary to Government,
Rural Development and Panchayat Raj Department
Fort.St.George, Chennai – 09.
- 3.The District Collector/Chairman,
District Rural Development Agency,
Pudhukottai District, Pudukottai.
- 4.P.Chinnappan
- 5.United India Insurance,
275, Floor No.2,
Dindigul Road, Manapaarai – 621 306.
Trichy, Tamil Nadu.

... Respondents

(R5 suo motu impleaded vide order
dated 16.08.2022)



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to pay a just and reasonable compensation a sum of Rs.50,00,000/- (Fifty Lakhs Only) and a government job to the petitioner's family for the death of his elder son deceased Saravanan due to the negligence on the part of respondents 3 and 4.

For Petitioner : Mr.A.Rahul

For Respondents : Ms.B.Deepa for R1

Mr.M.Sarangan, Additional Government Pleader
for R2 & R3

Mr.P.Thiyagarajan for R4

Mr.C.Karthik for R5

ORDER

The petitioner's son Saravanan was working as a Conductor in a private bus. On 27.08.2021, he was riding his TVS XL moped bearing Registration No.TN AW 8331. While returning home on the Rajalipatti to Ellaikkalpatti Road, he fell into a pit that was dug for the purpose of bridge construction. He had suffered serious injuries and died while being taken to Government hospital, Manapparai. Crime No.459 of 2021 was registered on the file of the Viralimalai Police Station.



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Contending that the State is vicariously liable and is obliged to pay compensation, the present writ petition has been filed.

2. When the matter was taken up for admission, a learned Judge of this Court directed the Contractor/R4 to deposit a sum of Rs.5.00 lakhs. This direction has since been complied with. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on a catena of case-laws in support of his contention that the petitioner is entitled to payment of just compensation.

3. The fourth respondent has filed detailed counter affidavit. The learned counsel appearing for the contractor took me through its averments. The stand taken by the fourth respondent is that he had sub-contracted the works in favour of one Manikandan and that the said Manikandan had made the necessary arrangements to warn the road users to take diversion. The fourth respondent also alleged that on account of the non-adherence to the warning signal to take diversion, the occurrence has taken place. Various allegations made in the affidavit had been denied in the counter affidavit filed by the fourth respondent.



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4.I carefully considered the rival contentions. This is a case in which the principle of no fault liability can very well be invoked. The statutory scheme set out in the Motor Vehicles envisages such an approach. TANGEDCO awards a sum of Rs.5.00 lakhs to the dependents of the deceased where death takes place due to electrocution. In other words, without going into the question of negligence, such a sum is awarded. The occurrence had taken place because the petitioner's son while riding his two wheeler had fallen into a pit dug by the fourth respondent. It was fourth respondent who was carrying out the government contract work under Pradhan Mantri scheme. Probably, that is why, the Central Government had also been made as a party.

5.The learned counsel appearing for the petitioner drew my attention to the decision reported in **AIR 1978 Allahabad 168 (Jaunpur Municipality v. Brahm Kishore)**. The Hon'ble Allahabad High Court confirmed the award of compensation to the plaintiff who suffered injuries because he had fallen in a ditch dug on the road while riding a bicycle at night. It must be noted that the decision was rendered in a Second Appeal. The petitioner's son was entitled to use the road and ride his two wheeler. The occurrence had taken place on a public road. He had fallen into the pit dug by a contractor engaged



by the Government. In these circumstances, I can very well without

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going into the question of negligence award compensation based on no fault liability approach. Following the direction given by this Court, the contractor had also deposited a sum of Rs.5.00 lakhs. The petitioner can very well withdraw the same without prejudice to his right to claim higher compensation. Since disputed facts have been thrown up for consideration, exercising writ jurisdiction, I am not in a position to go into the same. The petitioner would allege that the contractor had not put up barricades. On the other hand, the contractor would claim that the road users had been specifically called upon to take diversion and that the occurrence took place because the petitioner's son did not pay heed to the same. Unless evidence is taken, I cannot decide whether the contractor had breached his obligations. Even while permitting the petitioner to withdraw the same of Rs.5.00 lakhs already deposited by the contractor, I grant liberty to the petitioner to file a civil suit seeking higher compensation. It is seen that the two wheeler ridden by the deceased Saravanan was duly insured. The writ petitioner also submitted claim form on 19.08.2022 before the fifth respondent. The fifth respondent is directed process the application and pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of this order. All the contentions of the



petitioner and defences of the contractor are left open. The writ

petition is partly allowed. No costs.

03.01.2023

Index : Yes / No
Internet : Yes/ No
skm

Issue order on 04.01.2023

To:

- 1.The Secretary to Government,
Union of India, National Rural Roads Development Agency,
Ministry of Rural Development,
Krishi Bhavan, New Delhi.
- 2.The Secretary to Government,
Rural Development and Panchayat Raj Department
Fort.St.George, Chennai – 09.
- 3.The District Collector/Chairman,
District Rural Development Agency,
Pudhukottai District, Pudukottai.



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VERDICTUM.IN



G.R.SWAMINATHAN, J.

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