
(2015) 04 MAD CK 0163

In the Madras High Court

Case No : Writ Petition (MD) No. 10045 of 2009

G. Ravindran

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Fatal Accidents Act, 1855 — Section 1A

Citation : (2015) 5 MLJ 154

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Advocate : J. Anandhavalli, for the Appellant; T.S. Mohamed Mohideen, Addl. Government Pleader, Advocates for the Respondent

Judgement

V.M. Velumani, J.—This Writ Petition has been filed by the petitioner to direct the respondents to pay compensation to him for the death of his son, viz., Ashwin Ram, due to the negligence acts on the part of the respondents.

2. The petitioner is working as a Machine Operator in T.V.S. Sundaram Fasteners Limited, Virudhunagar. The petitioner's son, by name, Ashwin Ram, was admitted in Sri Maha Matriculation School, Thathaneri Main Road, Madurai, between 1999 and 2005. He studied from I Standard to V Standard in the said school. The petitioner admitted his son in the eighth respondent school on 05.05.2005 in VI Standard "E" Section. His son was a very studious boy and had a good conduct in the School. There was no complaint in the behaviour of his son by the respondents 8 and 9. The friends of the petitioner's son used to call him by the nickname "Scientist".

3. On 22.01.2009, a Marathan Race was conducted by the respondents and the students from VI to X Standard participated in the said Marathan. The respondents 8 and 9 directed the petitioner's son to assemble at the entrance of Fatima College. The Marathon was to start at 7.00 a.m. and to end at 9.30 a.m. The petitioner was informed by the respondents 8 and 9 that the Marathon race

will be over by 9.30 a.m. The petitioner dropped his son in the said place on 22.01.2009, at 6.15 a.m., as directed by the School Authorities and went to his job. At that time, the teachers informed him that the Marathon will be over by 9.00 a.m. and the students would be taken back to school to issue participation certificates.

4. The school authorities did not follow the information given to the petitioner, when he dropped his son before starting the Marathon Race. After completion of Marathon Race, his son Ashwin Ram along with 15 or 16 of his friends went to Swimming Pool under the control and maintenance of the fifth respondent. There was no security guard or Swimming Instructor or anyone to advise the children how to act in the Swimming Pool. Around 11.45 a.m., the petitioner was called by the School authorities to come immediately to the Government Hospital, Madurai. The petitioner was informed that his son drowned in the Swimming Pool and died.

5. Respondents 8 and 9 were responsible for the tragedy, as the petitioner's son was in their custody for Marathon Race. No reason was assigned by the respondents 8 and 9 for allowing the students to go to the Swimming Pool. There was a total negligence on the part of the respondents 8 and 9, as they failed to see that all the students assembled at one place after the Marathon Race. The petitioner sent his son to the Marathon Race only on the hope that the respondents 8 and 9 would take care of the students taken by them.

6. The petitioner has alleged that the total negligence on the part of the fifth respondent in not making any safety counter measures. There was no security guard either near the Swimming Pool or in the Office.

7. The petitioner lost his only son, aged 14 years, due to the negligence on the part of the respondents. Even though monetary compensation will not compensate the death of the petitioner's son, the respondents must be questioned about the tragedy, which happened to the petitioner's family and it should not happen to others in future. Hence, the petitioner has filed the present writ petition for the relief stated supra.

8. The fifth respondent has filed counter affidavit. It is stated that the writ petition for Mandamus is not maintainable, as no demand was made prior to filing of the writ petition. The petitioner's son after attending the Marathon Race, without consent of the teachers and without any care-taker, entered into the Swimming Pool. The fifth respondent is maintaining the Swimming Pool properly. Those who come to the Swimming Pool, must come with the proper care-taker. The petitioner was not in the scene of occurrence and has not made any specific allegations against the fifth respondent Corporation, in respect of maintenance of Swimming Pool. The petitioner has stated in paragraph 3 of the affidavit that he left his son with the teachers on 22.01.2009 at 6.50 a.m. and therefore, the School Management is liable for the fateful incident.

9. The petitioner is raising the disputed question of fact, which cannot be decided

in the writ proceedings. The petitioner has not disclosed the fact that whether his son is well aware of swimming or not. The petitioner has to prove the manner/facts leading to the death, for claiming compensation against the fifth respondent. Therefore, he prayed for dismissal of the writ petition.

10. Respondents 8 and 9 filed counter affidavit denying the averments made by the petitioner. In the counter affidavit, the respondents 8 and 9 stated that they did not conduct the Marathon Race on 22.01.2009. One Dhanam Trust conducted the Marathon Race. The eight respondent school never invited their students to participate in the Marathon Race. The students from various schools and public have voluntarily participated in the Marathon Race. The school did not direct the petitioner's son to come and assemble at the entrance of Fatima College. The Marathon Race started at 7.00 a.m. and ended at 9.30 a.m. The private person, by name, Dhanam Trust, conducted the Marathon Race and the parents were instructed by all the schools including the eighth respondent school, to take back the students after the Marathon Race. It is the duty of the parents to come to the spot and take back their children. The school did not inform or give any undertaking to the petitioner and other parents that the students will be taken to the school after the Marathon Race. Many parents came to the spot and took their children after the Marathon Race.

11. The Marathon Race was conducted by private party and more than 5000 people participated in the Race. After the Race, some of them went to Swimming Pool of their choice, without any information. The petitioner has made allegations against the fifth respondent. The newspaper cutting enclosed clearly shows that the incident occurred after the Marathon Race. The fifth respondent failed to maintain the Swimming Pool and did not make any security arrangements. The concerned authority in-charge of Swimming Pool must monitor to safeguard the amateur swimmers and they are responsible for any untoward incident, which happened or occurred inside the Swimming Pool. Therefore, the respondents 8 and 9 are not responsible for the incident and prayed for dismissal of the writ petition.

12. I have heard the learned counsel appearing for the parties and considered the arguments put forth by them and perused the materials on record. The learned counsel for the petitioner and the respondents reiterated the averments made in the affidavit and counter affidavit.

13. The learned counsel for the petitioner relied on the following Judgments:

"(i) The Judgment of the Division Bench of this Court, dated 29.04.2014, made in W.A.(MD) Nos. 1020 and 1021 of 2012 [The Chairman, TNEB, Chennai and others v. Karuppaveemmal], in which, I was a party, wherein in paragraphs 9 and 10, it has been held as follows:--

"9. The learned counsel for the appellants contended that the writ petition claiming compensation are not maintainable and that the proper remedy is only before the civil court by way of civil suit. But, his contention is untenable as this

issue is no longer res integra.

10. One of us (V. Ramasubramanian, J.) had an occasion to consider this issue recently in a decision dated 28.02.2014 in Writ Petition No. 61 of 2009 [D. Narayanasamy v. The District Collector and Others]. It was held therein:

"When things speak for themselves, this Court has a constitutional social obligation not to drive the parties to the civil court especially in the cases of this nature. This is borne out by several decisions of Supreme Court as well as this Court."

(ii) Mrs. Saroja Vs. The Government of Tamil Nadu and Tamil Nadu Electricity Board, (2014) 3 ACC 291 : (2014) 3 CTC 553 : (2014) WritLR WritLR 316 , wherein in paragraphs 7 and 9, it has been held as follows:

"7. The contention of the respondents that the petitioner has to approach the Civil Court for claiming compensation is not correct. This court considering the various decisions held that if the facts are not in dispute, and the death is due to negligence on the part of the State authorities, the legal heirs of the deceased can claim compensation in writ proceedings, vide the decision in the case of K. Sambath @ Chidambaranathan Vs. The Superintendent Engineer-I, Puducherry Electricity Board, Uppalam, Puducherry, The Junior Engineer, Electricity Board, Vadhanoor, Puducherry and The Secretary to Government, Secretariat, Puducherry, (2013) 2 ACC 780 : (2013) WritLR 176 . Relevant portion of the decision reads as follows:--

"8. It is a well settled principle of law declared by the Hon"ble Supreme Court that if the facts are not in dispute, the legal heirs of the victims of riot, custodial killing or death due to negligence on the part of the State authorities, can claim compensation in writ proceedings. The only impediment in entertaining writ petition is, there may be factual disputes such as the manner of death, whether there was negligence or not, age and income of the deceased, etc. In this case there is no dispute with regard to the manner of death, age of the deceased and income of the deceased.

9. Payment of compensation can be ordered by the High Court in appropriate case, particularly when there is no factual disputes, under Article 226 of the Constitution of India, is no longer res integra. In this regard, the following decisions can be usefully referred to.

(i) In The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, AIR 2000 SC 988 : (2000) CriLJ 1473 : (2000) 1 JT 426 : (2000) 1 SCALE 279 : (2000) 2 SCC 465 : (2000) 1 SCR 480 : (2000) AIRSCW 649 : (2000) 1 Supreme 265 , a sum of Rs. 10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In M.S. Grewal and Another Vs. Deep Chand Sood and Others, (2001) 2 ACC

540 : (2001) ACJ 1719 : AIR 2001 SC 3660 : (2001) 7 JT 159 : (2001) 5 SCALE 610 : (2001) 8 SCC 151 : (2001) AIRSCW 3430 : (2001) AIRSCW 4075 : (2001) 6 Supreme 655 : (2001) 7 Supreme 341 , Rs. 4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities.

(iii) In (2005) 9 SCC 586 (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs. 3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants.

(iv) In Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others, (2011) 8 JT 232 : (2011) 7 SCALE 489 : (2011) 8 SCC 568 , the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs. 3.29 lakhs, over and above Rs. 1.71 lakhs already paid by the Government. Insofar as our High Court is concerned, the said issue is dealt with in several cases. Few decisions are as follows:

(a) 2001 WLR 174 (C. Chinnathambi v. State of Tamil Nadu) # Rs. 1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt. R. Dhanalakshmi v. Government of Tamil Nadu) - Rs. 9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) The Chief Secretary to the Government of Tamil Nadu, The Secretary to the Government of Tamil Nadu, Home Department, The Secretary to the Government of Tamil Nadu, Education Department and The Secretary to the Government of Tamil Nadu, Health Department Vs. Mrs. R. Selvam, (2004) 3 MLJ 295 : (2004) WritLR 611 # Rs. 5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C.Thekkamalai v. State of Tamil Nadu) # The Division Bench enhanced the compensation from Rs. 75,000/- to Rs. 5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) v. State of Tamil Nadu and Another) # A sum of Rs. 5.00 lakhs was ordered as compensation to the family of the deceased.

(f) P.N. Kanagaraj Vs. The Chief Secretary, State of Tamil Nadu and Others, (2010) ACJ 2133 : (2008) 8 MLJ 1085 # Rs. 4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) V. Subramaniam Vs. State of Tamil Nadu and Others, (2010) ACJ 1861 # A sum of Rs. 3.50 lakhs was directed to be paid for the death of a student in the

school due to negligence of the Government School Teacher.

(h) T. Sekaran Vs. The State of Tamil Nadu - A sum of Rs. 9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department) # A sum of Rs. 10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) P. Ravichandran Vs. The Government of Tamil Nadu and Others, (2011) WritLR 943 # A sum of Rs. 18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) Ganesan and Nagammal Vs. The State of Tamil Nadu and Others, (2012) 2 CTC 848 # A sum of Rs. 10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (V. Ramar v. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs. 5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In Thangapandi Vs. Director of Primary Health Services, DMS Teynampet and Others, (2011) 256 MLJ 1329 # A sum of Rs. 5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P. No. 23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs. 10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

(o) In W.P. No. 20081 of 2007 dated 4.6.2012 I had an occasion to award a sum of Rs. 29.26 lakhs to the petitioner therein, who lost both his parents due to fall of a tree on the road side.

Applying the above decisions to the facts of this case, I am of the view that the respondent department is liable to pay compensation to the family of the petitioner for the death of petitioner's wife Malathy due to electrocution on 17.5.2009.

10. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, AIR 1970 SC 376 : (1969) 3 SCC 64 : (1970) 2 SCR 688 the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages

cannot be arrived at precisely. In the decision reported in M.S. Grewal and Another Vs. Deep Chand Sood and Others, (2001) 2 ACC 540 : (2001) ACJ 1719 : AIR 2001 SC 3660 : (2001) 7 JT 159 : (2001) 5 SCALE 610 : (2001) 8 SCC 151 : (2001) AIRSCW 3430 : (2001) AIRSCW 4075 : (2001) 6 Supreme 655 : (2001) 7 Supreme 341 the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in P.S. Somanathan and Others Vs. District Insurance Officer and Another, (2011) ACJ 737 : (2011) 112 CLT 208 : (2011) 2 JT 242 : (2011) 162 PLR 497 : (2011) 2 RCR(Civil) 228 : (2011) 2 SCALE 473 : (2011) 3 SCC 566 : (2011) 2 SCC(Cri) 48 : (2011) 4 SCR 367 : (2011) 1 TAC 861 : (2012) AIRSCW 2264 : (2011) AIRSCW 1313 .

11. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in Ibrahim Vs. Raju and Others, AIR 2012 SC 534 : (2011) 6 CTC 904 : (2011) 13 JT 90 : (2012) 167 PLR 102 : (2011) 4 RCR(Civil) 863 : (2011) 2 SCALE 297 : (2012) 1 TAC 22 : (2011) 6 UJ 4145 : (2012) AIRSCW 413 : (2011) 7 Supreme 500 In para 9 it is held thus,

"9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

In Reshma Kumari and Others Vs. Madan Mohan and Another, (2009) 10 JT 90 : (2009) 10 SCALE 90 : (2009) 13 SCC 422 : (2009) 12 SCR 305 the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus,

"26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued

in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

This Court is bound to bear-in-mind the above stated principles for arriving at just compensation.

12. With regard to the quantum of compensation is concerned, the learned counsel for the petitioner submitted a calculation memo, which reads as follows:

The learned counsel for the petitioner further submitted that the petitioner is entitled to get compensation from the date of death of his wife with 9% interest and interest alone comes to Rs. 40,000/- approximately.

13. In the light of above cited decisions of the Hon"ble Supreme Court as well as this Court, and in the circumstances of the case, and having regard to the death of petitioner's wife Malathy at the age of 47 years, the writ petition is allowed of with a direction to the respondents to pay a sum of Rs. 4,00,000/- (Rupees Four Lakhs only) in lumpsum as compensation to the petitioner's family, within a period of two weeks from the date of receipt of copy of this order. Out of the said amount, petitioner is entitled to Rs. 1,00,000/- and the two sons of the petitioner are entitled to Rs. 1,50,000/- each. No costs.

For reporting compliance of this order, post on 21.1.2013."

9. In view of the decision reported in Santosh Devi Vs. National Insurance Company Ltd. and Others, (2012) ACJ 1428 : AIR 2012 SC 2185 : (2012) 4 SCALE 559 : (2012) 6 SCC 421 : (2012) AIRSCW 2892 : (2012) 3 Supreme 197 , 30% of the income can be added towards future prospects. If 30% is added towards future prospects, the loss of income of the deceased would be Rs. 62,400/- (Rs. 48,000/- + Rs. 14,400/- = Rs. 62,400/-) per annum."

(iii) R. Pareetha Beevi Vs. The Chairman, (2014) WritLR WritLR 739 , wherein in paragraphs 8 and 14 it has been held as follows:

"8. Relegating the petitioners to approach the Civil Court may not be necessary in view of the above mentioned admitted facts and more particularly, the death is due to the negligence on the part of the Electricity Board. In such event, the petitioners can claim compensation in writ proceedings. In similar circumstances, this Court, in its decision reported in K. Sambath @ Chidambaranathan Vs. The Superintendent Engineer-I, Puducherry Electricity Board, Uppalam, Puducherry, The Junior Engineer, Electricity Board, Vadhanoor, Puducherry and The Secretary to Government, Secretariat, Puducherry, (2013) 2 ACC 780 : (2013) WritLR 176 , has held that there is no need for the parties to go Civil Court while the facts were admitted and proved that the death was due to electrocution on the part of the negligence of the Electricity Board and the Board cannot escape from the liability of paying compensation.....

14. Accordingly, taking into account the minimum wages that the deceased would have drawn as an agricultural collie, his monthly income is fixed at Rs. 3,000/- and following the Sarla Verma Case (cited supra), this Court arrived at just compensation under the following heads, viz.,

(iv) D. Narayanasamy Vs. The District Collector, Tiruvarur, The District Educational Officer, DEO Office, The Head Master, Government Higher Secondary School and The Assistant Manager, Oil Natural and Gas Commission, (2014) 2 LW 556 : (2014) 4 MLJ 26 wherein in paragraphs 28 to 32, it has been held as follows:

"28. In M.S. Grewal and Another Vs. Deep Chand Sood and Others, (2001) 2 ACC 540 : (2001) ACJ 1719 : AIR 2001 SC 3660 : (2001) 7 JT 159 : (2001) 5 SCALE 610 : (2001) 8 SCC 151 : (2001) AIRSCW 3430 : (2001) AIRSCW 4075 : (2001) 6 Supreme 655 : (2001) 7 Supreme 341 , the Supreme Court was concerned with the case of 14 young children, who were all students of 4th, 5th and 6th standards of a public school, who were drowned in river Beas. In a writ petition filed by the parents of the unfortunate children, the High Court awarded compensation. The management went on appeal to the Supreme Court. Among other questions, a question of maintainability of the writ petition was raised before the Supreme Court. But, the same was rejected by the Supreme Court by pointing out that the Law Courts exist for the society and that the Courts have an obligation to meet the social aspirations of the citizens.

29. In Rabindra Nath Ghosal Vs. University of Calcutta and Others, AIR 2002 SC 3560 : (2002) 7 JT 490 : (2002) 7 SCALE 137 : (2002) 7 SCC 478 : (2002) 2 SCR 698 Supp : (2002) 4 SCT 442 : (2002) 2 UJ 1425 , the Supreme Court again reiterated that the Courts have the obligation to satisfy the social aspirations of citizens and to apply the tool and grant compensation as damages in public law proceedings. The Court also pointed out that while enforcing fundamental rights and granting compensation, the Courts, acting under Article 226, do so under the public law by penalising the wrong doer and fixing the liability for the public wrong.

30. In Singaraj, Karupiah, Niraru and N. Balamurugan Vs. The State of Tamil Nadu and Others, (2009) 1 MLJ 416 , the parents of 4 minor children, who were crushed to death, when the compound wall of the school collapsed, came up before this Court under Article 226 claiming compensation. A defence was taken that on the fatal day, a few students climbed on to the grill gate and started swinging it back and forth. Unable to bear their weight, the gate fell down and crushed them. Therefore, a stand was taken that the incident was an act of God and that there was no negligence or carelessness on the part of the management. After citing the decision of the Supreme Court in Municipal Corporation of Delhi Vs. Subhagwanti and Others, (1966) ACJ 57 : AIR 1966 SC 1750 : (1966) 3 SCR 649 , highlighting the liability of the owners to ensure the safety of the structures owned by them, K. Chandru, J. held that when children of tender age are sent to a State supported school, it is the responsibility of the

school and the State to take care of the safety of the children. The learned Judge also observed that no negligence can be attributed to the children of tender age. To come to the said conclusion, the learned Judge relied upon two passages from the decision of the Supreme Court in *M.S. Grewal*, where the Supreme Court pointed out that the safety of children are of prime concern for the School Authorities and that till such time the children return to school, safe and secure after the picnic, the course of employment continues and resultantly, the liability of the school.

31. In *T.M. Kamalanathan Vs. Government of Tamil Nadu and Others*, (2009) 1 MLJ 634 , a claim for compensation was made by the father of a minor boy, for the death of his son due to electrocution. After citing the decision of the Full Bench of this Court in *P.P.M. Thangaiah Nadar Firm and Others Vs. The Government of Tamil Nadu*, (2007) ACJ 177 : (2006) 5 CTC 97 : (2006) 4 LW 560 : (2007) 2 MLJ 685 , K.K. Sasidharan, J., allowed the writ petition and granted compensation.

32. In *Ganesan and Nagammal Vs. The State of Tamil Nadu and Others*, (2012) 2 CTC 848 , a claim for compensation was made by the parents of a minor boy, who was killed in a bomb blast. The writ petition was allowed by this Court granting compensation."

(v) *A. Pavadai Vs. Revenue Divisional Officer, Villupuram and Others*, (2014) 3 MLJ 334 , wherein in paragraph 42, it has been held as follows:

"42. In the case on hand, at the time of death, the deceased was stated to be aged 5 years. Though there is no specific method in determining the quantum of compensation to be paid, for the death of a student, in these circumstances, yet, considering the judgment of the Apex Court in *R.K. Malik and Another Vs. Kiran Pal and Others*, (2009) ACJ 1924 : AIR 2009 SC 2506 : (2009) CLT 1370 : (2009) 8 JT 461 : (2009) 8 SCALE 451 : (2009) 14 SCC 1 : (2009) 10 SCR 87 : (2009) 6 UJ 2963 : (2009) AIRSCW 4381 , this Court is inclined to award compensation of Rs. 3,75,000/- with interest. The compensation amount has to be paid to the parents, by the Government, from the date of death, with interest at the rate of 7.5% per annum. There shall be a direction to the State to pay the compensation, within a period of one month from the date of receipt of a copy of this order."

(vi) *T. Sekaran Vs. The State of Tamil Nadu* , wherein in paragraphs 51 to 53, it has been held as follows:

"51. Once it is found that the family members of the victim are entitled to compensation, the next question to be considered is as to the quantum. There is no codified law, for arriving at the quantum of compensation in cases of this nature. Though special enactments such as the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1948, provide lot of indications for arriving at the quantum of compensation, in cases to which they apply, there is no enactment to cover cases of this nature. Even the Fatal Accidents Act, 1855, does not provide

adequate indications. The State of Kerala has a special enactment known as "The Kerala Torts (Miscellaneous Provisions) Act, 1976. But even the said Act, is primarily aimed at codifying the law relating to survival of causes of action, liability of joint tortfeasors and the liability in cases of contributory negligence in respect of torts.

52. Section 1A of the Fatal Accidents Act, 1855, is divided into 3 parts. The third part of the Section gives a clue and it reads as follows:--

"and in every such action the Court may give such damages as it may think proportionate to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought;"

53. Thus the only clue provided by the Fatal Accidents Act, 1855, is that the quantum of damages awarded by the Court should be proportionate to the loss resulting from the death. Therefore, we may have to look for guidance only from the principles laid down in various judicial pronouncements."

14. The learned counsel for the fifth respondent argued that the writ petition is not maintainable on two grounds, viz.,

"(a) The petitioner did not make any demand before filing the writ petition. The writ petition for issuance of Writ of Mandamus without any demand is not maintainable; and

(b) the fifth respondent is disputing the facts as alleged by the petitioner. In writ proceedings, disputed question of facts cannot be decided."

15. This issue is no longer *res integra*. This Court in the Judgments reported in *T. Sekaran Vs. The State of Tamil Nadu* ; *Mrs. Saroja Vs. The Government of Tamil Nadu and Tamil Nadu Electricity Board*, (2014) 3 ACC 291 : (2014) 3 CTC 553 : (2014) WritLR 316 ; *R. Pareetha Beevi Vs. The Chairman*, (2014) WritLR 739 ; *D. Narayanasamy Vs. The District Collector, Tiruvarur, The District Educational Officer, DEO Office, The Head Master, Government Higher Secondary School and The Assistant Manager, Oil Natural and Gas Commission*, (2014) 2 LW 556 : (2014) 4 MLJ 26 ; and the Judgment, dated 29.04.2014, made in *W.A. (MD) Nos. 1020 and 1021 of 2012 [The Chairman, TNEB, Chennai and others v. Karuppayeemammal]*, in which, I was a party, have held in similar circumstances, that the writ petition is maintainable and parties need not be driven to civil court.

16. Further, the Hon"ble Apex Court has held that the Courts have an obligation to meet the social aspirations of the citizens and grant compensation as damages in public law proceedings. The Hon"ble Apex Court also pointed out that while enforcing the Fundamental Right and granting compensation acting under Article 226 of the Constitution of India under public law penalising the wrongdoer and fixing the liability for the public wrong. In view of the above Judgments, the contention of the learned counsel for the fifth respondent has no merits. Therefore, I hold that the writ petition is maintainable and the petitioner need not be driven to civil court.

17. The next question is whether the respondents 5, 8 and 9 were negligent, which led to the death of the petitioner's son.

18. The petitioner's son participated in the Marathon Race conducted on 22.01.2009. According to the petitioner, the respondents 8 and 9 directed all the students to assemble at the entrance of Fatima College, Madurai. The petitioner in his complaint to the police on 22.01.2009, had stated that he handed over his son to Physical Education Teacher of the eighth respondent on 22.01.2009, at 6.15 a.m. it is the case of the petitioner that the respondents 8 and 9 informed him that the students after the Marathon Race, would be taken to school for distribution of Certificates.

19. The respondents 8 and 9 denied that they instructed the students to assemble at the entrance of Fatima College. The students of various schools voluntarily participated in the Marathon Race conducted by the private party, viz., Dhanam Trust. This contention of the respondents 8 and 9 is contrary to the facts, as they themselves have stated that all the parents were informed to take their children back after the Marathon Race and many parents after the Marathon Race, have taken back their children. The petitioner did not come and take his son. This statement shows that the officials of the eighth respondent were present during the Marathon Race. Some of the students, after the Marathon Race, went to Swimming Pool without any information. This statement itself amounts to negligence on the part of the respondents 8 and 9. The officials of the respondents 8 and 9 were present at the starting point as well as at the place where the Marathon Race ended.

20. It is the duty of the officials of the respondents 8 and 9, to take care of their students from the time they assembled at the starting point till their parents come and take them back. If the parents failed to come and take back their children, the officials of the respondents 8 and 9 ought to have taken care of the students and informed the parents to make arrangements to take back their children. The respondents 8 and 9 have not stated that their officials were not present at the starting place and at the time of Marathon Race. The officials of the respondents 8 and 9 were negligent in not taking care of the students after the Marathon Race. Only because of negligence of officials of the respondents 8 and 9, the petitioner's son and others went to the Swimming Pool.

21. The Swimming Pool is maintained by the fifth respondent. Admittedly, there was no security guard, instructor and care-taker. Like the petitioner's son, other students were allowed to enter the area of Swimming Pool without any escort or care-taker. The fifth respondent is negligent and failed to provide sufficient safeguards and protect the persons, who use the Swimming Pool.

22. From the above facts, it is clear that the respondents 5, 8 and 9 were negligent, which resulted in the death of the petitioner's son at an early age. Therefore, the respondents 5, 8 and 9 are liable to pay compensation to the petitioner.

23. The next question is to be decided is the quantum of compensation. There is no provision for arriving at compensation in case of death of a person, like the present case. Loss of human life cannot be compensated in monetary terms. Courts have fixed compensation, considering the provisions of Fatal Accidents Act, Motor Vehicles Act and notionally arriving at the income, which the young deceased boy would have earned and awarded compensation. This Court in the Judgment reported in *Mrs. Saroja Vs. The Government of Tamil Nadu and Tamil Nadu Electricity Board*, (2014) 3 ACC 291 : (2014) 3 CTC 553 : (2014) WritLR WritLR 316 , referred to various Judgments, by which compensation was awarded. The said paragraphs are already extracted supra.

24. In the Judgment reported in *T. Sekaran Vs. The State of Tamil Nadu* , this Court arrived at the notional income of the deceased and applying multiplier method, awarded compensation to the legal heirs of the deceased.

25. In the Judgment reported in *D. Narayanasamy Vs. The District Collector, Tiruvarur, The District Educational Officer, DEO Office, The Head Master, Government Higher Secondary School and The Assistant Manager, Oil Natural and Gas Commission*, (2014) 2 LW 556 : (2014) 4 MLJ 26 , this Court notionally fixed the income, which the disabled student would have earned, and awarded compensation by applying multiplier, which is applicable to the age of the student at the time of accident.

26. In the present case, the petitioner is employed in a reputed company. Even though, the petitioner has not stated the income he is receiving, the petitioner would have given good education to his only son. The petitioner has not quantified any amount of compensation. He also has not furnished his salary details. He has stated that he has lost his only son and he and his wife have suffered great loss and has stated that others should not suffer like him and his wife. That is the reason why, he approached this Court.

27. The petitioner has stated that his son was a very studious boy and there was no complaint either on studies or in the behaviour. He also stated that his son was nicknamed as "Scientist". These averments were not denied by the respondents. Therefore, the petitioner's son would have studied well and would have got a decent job with good salary, if he did not die. Taking into account the family background and possibility of the petitioner's son would have got a good and decent job, the notional income of his minor son would have received is fixed monetarily at Rs. 7,500/- per month and the total annual income comes to Rs. 90,000/-.

28. The petitioner's son was aged 14 years 4 months at the time of his death. Taking his age as 15 years, the appropriate multiplier as per second schedule of the Motor Vehicles Act, is "16". Applying the said multiplier, the total amount comes to Rs. 14,40,000/- [Rs. 90,000/- x 16]. Deducting 1/3 from the amount i.e., Rs. 4,80,000/-, the total compensation amount comes to Rs. 9,60,000/-, which is just and proper.

29. In the result, the respondents 5, 8 and 9 are directed to pay equally the compensation amount of Rs. 9,60,000/- i.e., Rs. 4,80,000/- by the fifth respondent and Rs. 4,80,000/- by the respondents 8 and 9, within twelve weeks from the date of receipt of a copy of this order. If the respondents 5, 8 and 9 failed to pay the amounts within the time limit fixed, the compensation amounts shall carry interest @ 7% p.a. from the date of incident, viz., 22.01.2009 till the date of payment in full. The writ petition is ordered accordingly. No costs.