(2010) 12 MAD CK 0185

In the Madras High Court

Case No : Writ Petition (MD) No. 1332 of 2010

Thangapandi — APPELLANT

Vs

Director of Primary Health Services, DMS Teynampet and Others — RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:
Constitution of India, 1950 — Article 21, 47
Indian Medical Council Act, 1956 — Section 33

Citation : (2011) 256 MLJ 1329

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for M. Gnanagurunathan, for the Appellant; S.C. Herold Singh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the Writ Petition is for issuing a Writ of Mandamus directing Respondents 1 to 3 to take action against the erring Medical Officers and Staff of the fourth Respondent -Primary Health Centre and direct the Respondents to pay a sum of ` 5 Lakhs as compensation to the Petitioner.

2. Brief facts, necessary for the disposal of the Writ Petition, are as follows:

The Petitioner married one Kannigadevi, aged about 22 years, daughter of Sanjeevi and she became pregnant. She came to her mother''s house for delivery as per the customary practice. On 1.1.2010, at about 1.00 a.m., she developed labour pain, and therefore, she was taken to the Primary Health Centre, Saptoor. She was admitted in the said hospital at about 2.00 a.m. At that time, there was no duty doctor/medical officer available, except staff nurse and Midwife, though it is a 24 hours Maternity Hospital. The Petitioner''s wife was not given treatment due to want of doctors and on the same day at about 3.18 a.m., she gave birth to a female child. At about 4.00 a.m., the condition of the Petitioner''s wife worsened and the Petitioner along with his mother-in-law

appraised the condition of the Petitioner''s wife to the staff nurse and asked for immediate attention. There was a profuse bleeding from 4.00 a.m. onwards. As the duty doctor/medical officer was not available, the staff nurse could not take any decision for further treatment. No information was given to the doctors to attend the Petitioner''s wife, who developed complication after giving birth to the female child. Therefore, at about 12.00 Noon, she was taken to the Government Hospital, Elumalai, and after examination, the doctors declared her as dead at 12.20 p.m. The said delay in giving treatment caused the death of the Petitioner''s wife.

3. The Petitioner is a daily paid labourer working in brick kiln. He has given representations to the District Collector and the Deputy Director of Health Services, Madurai, to take action against the erring staff and prayed for compensation of a sum of ` 5,00,000/- for the death of his wife. Since no action is taken, the Petitioner has filed the present Writ Petition for the relief stated earlier.

4. It is contended by the learned Counsel appearing for the Petitioner that even though the Primary Health Centre is a 24 hours Maternity Hospital, no doctor/ medical officer was available to meet the emergency treatment and due to the carelessness of the doctors and the staff nurses, the Petitioner has lost his wife, for which adequate compensation has to be paid by the Respondents or by the State Authorities on the principle of vicarious liability.

5. The learned Counsel for the Petitioner further submitted that the Petitioner''s wife gave birth to the female child in Saptoor Primary Health Centre and she died while she was taken to the Government Hospital, Elumalai and regarding the said fact, there is no dispute. In this regard, the Petitioner gave a representation to Respondents 2 and 3 by Registered Post and no action is taken till date and the conduct of the Respondents, particularly, the non-availability of the doctors to treat the poor patients, which is a fundamental right guaranteed under Article 21 of the Constitution of India should be viewed seriously. The learned Counsel also submitted that this Court considered a similar issue in respect of the very same Primary Health Centre and gave a finding regarding the negligence of the Medical staff and awarded a sum of ` 5,00,000/- as compensation to one V. Ramar in the case of V. Ramar v. Director of Medical and Rural Health Services (2010) 1 MLJ 1409.

6. In support of his contention, the learned Counsel for the Petitioner also relied on the Judgments of the Supreme Court in Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others, and in The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, .

7. The learned Government Advocate appearing for the Respondents, on the basis of the counter affidavit filed by the Respondents, submitted that the Petitioner''s wife was admitted in the Primary Health Centre, Saptoor, on 1.1.2010 at about 2.10 a.m. with labour pain. The staff nurse and Auxiliary

Nursing Midwife conducted delivery. The mother delivered a live female baby at 3.18 a.m. There was no abnormal bleeding and the patient was examined by one Doctor Mr. Jeyakrishnan at about 9.15 a.m. on 1.1.2010 and the patient was conscious and no undue bleeding was noticed. According to the medical records, the mother was in good health condition. However, at about 11.15 a.m., the mother experienced breathing problem and the staff nurse informed the Medical Officer, who diagnosed the medical condition of the Petitioner''s wife as "amniotic fluid embolism" and the Medical Officer instructed the duty staff to call 108 Ambulance Service to refer the patient to the higher medical institution. Accordingly, she was referred to the Government Hospital, Usilampatti, by calling 108 ambulance at about 12.20 p.m. The mother was declared to have died in transit at about 12.30 p.m. by Medical Officer, Government Hospital, Usilampatti, and therefore, there is no negligence on the part of the Respondents. The doctor has also seen the Petitioner''s wife at 9.15 a.m. on 1.1.2010. The learned Government Advocate appearing for the Respondents further submitted that since there was no bleeding and the delivery being normal, the non-availability of the doctor at the time of delivery or subsequently is immaterial and the Petitioner cannot claim compensation for the death of his wife.

8. I have considered the above rival submissions made by the learned Counsel appearing for the Petitioner as well as the learned Government Advocate appearing for the Respondents.

9. The point in issue is as to whether the presence of a doctor is required for conducting delivery in a 24 hours Maternity Hospital and whether the Petitioner is entitled to get compensation and any action need to (sic) be initiated against the responsible persons.

10. Admittedly, the Petitioner''s wife was admitted in the Primary Health Centre - Maternity Hospital, Saptoor, which is a 24 hours Maternity Hospital, where there is no restriction to admit the patients. The time of admission of the Petitioner''s wife is 2.00 a.m. on 1.1.2010. Even according to the counter affidavit filed by the second Respondent, who has filed the same without any personal knowledge based on records, the delivery of the baby was at 3.18 a.m.. It is the case of the Petitioner that the Petitioner''s wife was profusely bleeding from 4.00 a.m. onwards, which was intimated to the staff nurse immediately. However, due to the non-availability of the doctor/medical officer in the Maternity Hospital, no step was taken to give any treatment to the Petitioner''s wife.

11. The said fact is not denied in the counter affidavit filed by the second Respondent by any person, who is having personal knowledge about the facts. Even according to the counter affidavit, the doctor examined the patient only at 9.15 a.m. on 1.1.2010, i.e., after lapse of seven and fifteen hours. The patient, having developed undue bleeding, is required to get treatment immediately and the delay in giving treatment will be disastrous. The said fact having not been denied by the doctor or by the staff nurse, who was present in the hospital either at the time of deli very or thereafter is a serious aspect, which is noticed by this

Court seriously. The version of the second Respondent, who is stationed at Madurai, based on the recorded version, cannot be treated as a true version on the facts and circumstances of the case. When the time of admission and time of delivery co-relate with the version of the Petitioner as well as the counter affidavit filed by the second Respondent, the complication arose to the patient after delivery at 4.00 a.m. cannot be brushed aside. Thus, there is unreasonable delay in giving proper treatment by a qualified medical practitioner to the Petitioner''s wife, which resulted in loss of blood, due to which the Petitioner''s wife died at 12.20 p.m. on 1.1.2010. Therefore, the negligence on the part of the doctors by not attending the patient, who are expected to have constant watch and treatment, is fully established and for the death of the Petitioner''s wife, who left a female child has to be compensated by the Respondents by paying adequate compensation on the principle of vicarious liability.

12. The issue as to when a doctor can be proceeded for medical negligence is no longer res integra in the decision in Martin F.D'' Souza v. Mohd. Ishfaq (2009) 2 SC 40 : (2009) 5 MLJ 510, the Supreme Court held that if a doctor treated a patient with ordinary care, then anything happens to the patient, the doctor concerned cannot be blamed, unless it is established that there is a criminal negligence on the part of the doctor in a manner known to law.

13. Here, in this case, even as per the counter affidavit filed by the second Respondent, who is not the Medical Officer of the fourth Respondent-Primary Health Centre, the doctor examined the patient/deceased, (wife of the Petitioner), only at 9.15 a.m. on 1.1.2010 and from 2.10 a.m. to 9.15 a.m., no medical treatment was given by a qualified medical practitioner, which is a clear case of dereliction of duty on the part of the medical officer attached to the said hospital. It is also a breach of public trust reposed on the part of the medical officer, who is responsible for the affairs of the Primary Health Centre, Saptoor.

14. Article 21 of the Constitution of India guarantees right to life, which includes right to get meaningful health care, especially during maternity/delivery period and either the Petitioner or his deceased wife cannot be blamed for any negligence, as she was admitted in the said hospital well in advance. At the time of admitting the Petitioner''s wife in the said hospital at about 2.10 a.m., except labour pain, no other complication/complaint was noticed and after giving birth to the child at 3.18 a.m., only profuse bleeding developed, which continued and due to not giving effective and proper treatment in time by a qualified doctor/ medical officer, the Petitioner''s wife died.

15. The fourth Respondent - Primary Health Centre is treated as a 24 hours Maternity Hospital, and therefore, at all times, a medical officer is expected to be available or at least on immediate call, he should be in a position to reach the hospital within a short span of time to treat the patient, who may develop complication at the pre/post delivery stage. This Court in V. Ramar v. Director of Medical & Rural Health Services (supra), has noticed the negligent attitude on the part of the medical officer in the fourth Respondent hospital and held that

though there were two duty doctors allotted to the Primary Health Centre, the mother was given treatment by staff nurses and midwife, who are expected to assist the doctors only and awarded a sum of ` 5,00,000/- as compensation to the (sic) father of a deceased lady and grandson. In the said case, due to the death of the mother and son, the son-in-law has become mentally retarded.

16. In the said case, this Court followed the Judgments of the Supreme Court and other High Courts in Pt. Parmanand Katara Vs. Union of India (UOI) and Others, ; Ranjit Kumar Das v. Medical Officer, ESI Hospital and Ors. III (1997) PCJ 336 (CDRC West Bengal) and in Lepine v. University Hospital Board (1964) 5 DLR 225 and in Paragraph Nos. 11, 12 and 13 of this Court''s judgment it is held as follows

11. The Constitution envisages the establishment of a welfare state as the federal level as well as the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the persons seeking to avail those facilities.

12. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated that position. A doctor at the Government hospital positioned to meet this state obligation is therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained. Failure on the part of a Government hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of the right to life. In this context, I may also refer to Article 47 of the Constitution of India imposing a duty on the State to raise the standard of living and improve the public health.

13. In Pt. Parmanand Katara Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has held as under:

Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise

cannot be sustained and, therefore, must give way.

In this context, I may also refer to the decision in the case of Ranjit Kumar Das v. Medical Officer, ESI Hospital and Ors. III (1997) CPJ 336 (CDRC West Bengal) wherein it has been held that even the failure of the hospital to treat the card holder on the ground of absence of bed, would amount to negligence and therefore, adequate compensation must be provided. In a Canadian case Lepine v. University Hospital Board (1964) 5 DLR 225, the Court held that the hospital was liable for negligence when, in the absence of nurse, a seven year old boy fall out of the window and suffered personal injuries. In the case of Jones v. Manchester Corporation (1952) 2 All ER 125(CA), again it has been held that the hospital authority can be held liable if it fails to provide sufficient or properly qualified and competent medical staff for a unit.

17. In the said case, while awarding compensation, the first Respondent herein was also directed to take action against the erring persons, who were responsible for the incident. The said judgment was rendered by this Court on 19.11.2009. Within two months, the second death of a person for similar reasons has occurred, which clearly demonstrates the careless and indifferent attitude not only on the part of the medical officer of the fourth Respondent - Primary Health Centre, but also the insensitive attitude of Respondents 1 and 2, which has to be seriously taken note of by the higher officials concerned.

18. In the list of Primary Health Centres, functioning 24 hours, hosted by the Ministry of Health and Family Welfare Department in its web site, the Primary Health Centre, Saptoor, Madurai District, is shown as Item No. 40, as a 24 hours Hospital/Primary Health Centre.

19. The Code of Medical Ethics drawn up with the approval of the Central Government u/s 33 of the Indian Council Medical Act and observed is as follows:

Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise cannot be sustained and, therefore, must give way.

20. Even a patient cannot be denied emergency aid due to the non-availability of bed in the Government Hospital and if any such denial is made, the same amounts to violation of right to life guaranteed under Article 21 of the Constitution of India, as held by the Supreme Court in Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, .

21. The decision relied on by the learned Counsel for the Petitioner in Malaykumar Ganguly v. Dr. Sukumar Mukherjee (supra), supports the proposition for awarding compensation in an appropriate case by the State for violation of Article 21 of the Constitution of India. The other judgment relied on by the learned Counsel for the Petitioner in Chairman, Railway Board v. Chandrima Das (supra), is for the proposition that a doctor, who treats a patient, should take

sufficient care of normal prudence and that is the legitimate expectation of every patient, who approaches the hospital for treatment.

22. The Maternity Hospital, without a qualified doctor, is like a school without teacher, transport vehicle without driver, police station without policemen and an aircraft without pilot. Right to health being a fundamental right as guaranteed under Article 21 of the Constitution of India, non-availability of doctor in a 24 hours Maternity Government Hospital is a serious aspect required to be viewed by the State Government seriously, which is running a welfare administration for the benefit of people. Mere existence of hospital is not sufficient. Any amount of defence, which could be raised by the Medical Department or Medical Officer of the fourth Respondent - Primary Health Centre, will not be considered as satisfactory explanation. The Government is spending huge amount towards health care, which is bound to look into this aspect and bound to take serious remedial measures to see that the hospitals are having Medical Officers/Duty Doctors available at all times (24 hours). If the same is not ensured, right to health as enshrined in Article 21 of the Constitution of India will be a promise of unreality to the village people.

23. Applying the said principles stated in the said Judgments to the facts of the present case and considering the age of the Petitioner and the deceased, who left behind the Petitioner as well as an infant female child, I am of the view that interest of justice would be met by directing the Respondents to pay a sum of ` 5,00,000/- (Five Lakhs Only) as compensation to the Petitioner for the death of his wife and mother of the child from the Respondents for not giving treatment by a qualified medical practitioner at the post delivery stage of his wife in time.

24. For all the reasons stated above, Respondents 1 and 2 are directed to pay a sum of ` 5,00,000/- (Five Lakhs Only) to the Petitioner on his behalf and on behalf of his infant child within a period of four weeks from the date of receipt of a copy of this order. The Petitioner shall deposit 50% of the said payment in a fixed deposit in a nationalized bank in favour of his child till the child reaches the age of 20 or till her marriage after attaining majority. The Petitioner is permitted to draw the interest of such deposit as a father and natural guardian once in three months. If there is any other legal heir is entitled to compensation for the death of the Petitioner''s wife, it is open to such legal heir/heirs to approach this Court for variation of this order. It is made clear that if the payment of said amount is delayed, Respondents 1 and 2 shall pay interest at the rate of 9% per annum from January 2011 till such payment is made. The Respondents 1 and 2 are also directed to fix the responsibility on the doctor, who failed to take care of the Petitioner''s wife during and after the delivery time, which resulted her death, in accordance with law.

The Writ Petition is allowed in the above terms. No costs.

