

W.A.(MD).No.1556 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

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and

C.M.P.(MD).No.11095 of 2018

1.The Government of Tamilnadu,
Rep by its Secretary,
Education Department,
Secretariat, Chennai.

2.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

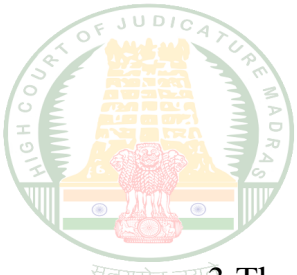
3.The District Educational Officer,
Thuckalai Educational District,
Thuckalai,
Kanyakumari District.

...Appellants

Vs.

1.K.Renjees Mary,

2.The Correspondent
St. Maria Goretty Higher Secondary School,
Manbalikarai, Kanyakumari District.



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3. The Headmaster,
St.Maria Goretty Higher Secondary School,
Manalickarai, Kanyakumari District.

4. Jeya Frank (Minor)
Rep by his Father Mr. Jeyasekar,
Pudukkaduvetti Vilai,
Swamiyarmadam, Kattathurai Post,
Kanyakumari District.

...Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 28.03.2017 passed in W.P.(MD).No.7906 of 2013.

For Appellants : Mr.M.Sarangan
Additional Government Pleader
For Respondents : Mr.S.C.Herold Singh for R1
: Mr.K.Ragatheeskumar for
M/s. Issac Chambers

J U D G M E N T

[Order of the Court was made by **P.VELMURUGAN, J.**]

This Writ Appeal has been filed by the appellant as against the order passed by this Court dated 28.03.2017 in W.P.(MD).No.7906 of 2013.



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2. The first respondent herein has filed the writ petition as against the appellants herein claiming a sum of Rs.50,00,000/- as compensation for the eye injury caused on her son on 05.05.2010 at the school premises.

3. The petitioner's son, namely, Remish Fedlin was studying at the respondent school in IX Standard during the academic year 2009-10. It is stated that on completion of the academic year 2009-10, as per the instructions of the correspondent and the Headmaster of the school, the petitioner's son attended special coaching classes for Standard X. It is averred that while the petitioner's son was attending the classes, during interval, one of the co-student by name Jeya Frank attacked her son with a stone inside the school premises and when petitioner's son tried to escape from the attack, as a result, the said stone fell on her son's right eye. Pursuant to the said injury sustained by him, the petitioner spent more amount for his treatment and despite all efforts, her son lost his eye sight in the right eye. Therefore, the petitioner has filed the writ petition before this Court.

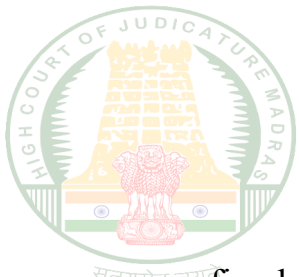


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4. The learned Single Judge has considered the matter and allowed the writ petition and directed the respondents therein to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) to the petitioner's son. Aggrieved over the same, the respondent Nos.1 to 3 have filed a writ appeal in W.A.(MD).No.1556 of 2018 and the respondent Nos.4 and 5 have filed a separate appeal in W.A.(MD).No.1470 of 2018.

5. Mr.M.Sarangan, learned Additional Government Pleader, appearing for the appellants would submit that though the private respondent has sent a notice for the alleged incident, whereas, he has not sent a notice to the appellants. Without even sending the notice and without giving any representation, the writ petitioner has filed the writ petition impleading them as a party. Further, they are no way connected with the incident and also they are not responsible for the same. It is not the incident that due to the failure on the part of the official respondents, ie., the appellants herein. Since, it is a fight between two students, wherein some injuries have been caused on one of the person, which requires to be proved by adducing evidence. When the appellants have not connected with the said incident, the liability ought not to have been

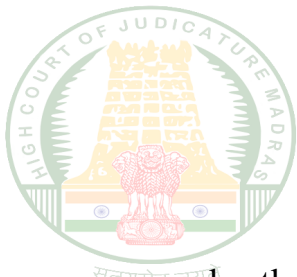


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fixed on the appellants. Therefore, the learned single Judge has failed to consider the defence taken by the appellants and without considering the same, fastened the liability on the official respondents and hence, prays for interference.

6. The learned counsel for the private respondent would submit that the writ petition's husband was abroad and her son went to the school during vacation. The Correspondent and the Headmaster of the school conducted the special class, which is in violation of the Government order issued by the appellant in the other appeal. Further, when the petitioner's son went to the school, one of the co-student attacked him. Due to that, he sustained eye injury and also he took the treatment in Bejansingh Eye Hospital, Nagercoil and also went for further treatment, due to that he sustained 40% of the disability and lost his right eye sight. The disability certificate also shown that he has sustained 40% disability and the injuries sustained by the son of the first respondent is only due to the negligence on the part of the appellants in W.A.(MD).No.1470 of 2018 and even the appellants in this appeal have not taken any action against the correspondent and the headmaster. Despite the direction given



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by the Government, during vacation time, the school conducted special class. The incident has happened only due to the special class. The appellants in W.A.(MD).No.1470 of 2018 has not given any care and that is why the petitioner's son sustained injury and the said school is under the control of the Minority Institution.

7. The appellant in other appeal are responsible to control the students. The appellants in W.A.(MD).No.1470 of 2018 have not taking case of the son of the first respondent and the students of the school and they are not denied that he went to the school during the holidays ie., vacation time and also has not denied the injuries sustained by her son. Therefore, the writ Court rightly appreciated the same and considered the fact that the responsible officers and the correspondent have to discharge their duties.

8. This Court considered the rival submissions made by the learned Additional Government Pleader appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available on record.



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9. Admittedly, the son of the first respondent was studying in 9th standard in the fourth respondent's school. The son of the first respondent have attended the school during holiday, on that day, he sustained injuries. However, the negligence and other aspects have to be decided only by way of adducing the evidence and also the injuries sustained and also the percentage of disability and the liability can be decided only after giving opportunity to the parties and evidence has to be let in and the writ Court, without any proper pleadings and also the documentary evidence, ought not to have decided the cases of this nature. If the decision requires any further evidence, writ Court ought not to have decided the factual aspects especially requires evidence.

10. Though the learned counsel for the first respondent placed reliance on the judgment of the Hon'ble Apex Court in the case of the *Sanjay Gupta and others Vs. State of Uttar Pradesh* reported in **2022 (3) SCC (Cri) 60**. In that case, the injuries sustained only due to the collapse of the building, whereas in this case, the fact is that only the co-student caused the injury. Therefore, the said case is not applicable to the present case on hand. This Court does not find any iota of material to



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show that the incident had happened only due to the act of the appellant but by the co-student. However, to prove the allegations levelled in the affidavit requires some evidence. Hence, cases of this nature writ Court cannot decide the issue by exercising power under Article 226 of the Constitution of India. Therefore, the order passed by the learned single Judge of this Court in W.P.(MD).No.7906 of 2013 is hereby set aside and further the first respondent/writ petitioner is at liberty to work out her remedy in the manner known to law.

11. Accordingly, this Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[P.V.J.] [K.K.R.K.J.]

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NCC : Yes/No

Index : Yes/No

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