IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28-2-2014

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.61 of 2009
and
M.P.Nos.2 and 3 of 2009

D.Narayanasamy .. Petitioner

Vs

1. The District Collector,
   Collectorate,
   Tiruvarur.

2. The District Educational Officer,
   DEO Office,
   Thiruvarur.

3. The Head Master,
   Government Higher Secondary School,
   Pulivalam,
   Thiruvarur District.

4. The Assistant Manager,
   Oil Natural and Gas Commission,
   Niravi, Karaikkal,
   Pondicherry Union. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents as jointly to pay a sum of Rs.10,00,000/- to the petitioner as compensation.

For Petitioner : Mr.P.Vijendran
For Respondents-1 to 3 : Mr.R.Ravichandran,
Additional Government Pleader.
For Respondent-4 : Mr.K.Shanmuga Kani

O R D E R

The petitioner is the father of a minor boy by name N.Jayaprakesh. When the petitioner's son was studying 12th Standard during the academic year 2008-2009, in the Government Higher Secondary School, Pulivalam, Tiruvarur District, he was taken by the N.S.S. Programmer of his school to a camp organised by N.S.S., at a village by name Perungudi. The camp was scheduled to be held for a period of 10 days from 17.12.2008 till 26.12.2008.

2. Unfortunately, the petitioner's son was seriously injured, when a pumping machine installed by the Oil Natural and Gas Commission, which is the fourth respondent herein, exploded. The petitioner's son was first treated at a local hospital and was later shifted to a private hospital at Thanjavur. On the recommendation of the District Collector, the Oil Natural and Gas Commission released a sum of Rs.50,000/- for the treatment of the petitioner's son at the private hospital. But, the private hospital demanded a huge amount for continuing the treatment. At that stage, the petitioner came up with the above writ petition, praying for the issue of a Writ of Mandamus to direct the respondents jointly to pay a sum of Rs.10 lakhs as compensation. Pending disposal of the writ petition, the petitioner also sought an interim direction to the fourth respondent to pay a sum of Rs.2 lakhs, to enable the petitioner's son to continue to receive treatment at the private hospital.

3. On 6.1.2009, the writ petition came up for orders as to admission. At that time, this Court directed the learned counsel for the petitioner to serve notices on the Standing Counsel for the fourth respondent and also to take private notice to all other respondents, returnable by 12.1.2009.

4. Thereafter, the miscellaneous petition for interim direction came up for hearing on 10.2.2009. After hearing the learned counsel appearing for all the parties, I passed an order, directing the first and the fourth respondents to ensure continued medical treatment of the petitioner's son in the private hospital where he was then receiving treatment. I directed the expenses for the treatment to be shared equally between the respondents 1 to 3 on the one hand and the fourth respondent on the other hand. This order was necessitated on account of the fact that the scrotum, perineum and inguinal region of the petitioner's son had been severely damaged and any laxity in administering treatment, would have resulted in the death of the petitioner's son. Fortunately, the respondents 1 and 4 co-operated and the petitioner's son received treatment upto 11.4.2009 and was later discharged.

5. Thereafter, the respondents filed their counter affidavits and the main writ petition was taken up for hearing.

6. I have heard Mr.P.Vijendran, learned counsel for the petitioner, Mr.R. Ravichandran, learned Additional Government Pleader for respondents 1 to 3 and Mr. K.Shanmuga Kani, learned counsel for the fourth respondent.

7. The case of the petitioner, as seen from the affidavit in support of the writ petition is that his son, a meritorious student, who had secured 381 marks out of 500 in the 10th Standard, was studying 12th Standard during the academic year 2008-2009. The petitioner is an agricultural daily wage earner and he belongs to the Scheduled Caste. Therefore, naturally, the petitioner's entire life revolved around the dream prospect of his son getting educated higher and bringing the family out of poverty and social

backwardness.

8. The petitioner's son was a member of the National Service Scheme (N.S.S.). It appears that the N.S.S. Programme Officer of the third respondent-school where the petitioner's son was studying, organised a camp for 10 days from 17.12.2008 to 26.12.2008 at a village by name Perungudi. As a volunteer of the N.S.S., the petitioner's son participated in the camp.

9. According to the petitioner, his son went out, after breakfast on 19.12.2008 to attend to the nature's call. At that time, the S.R.P. Pumping Motor located 17 meters away from the camp area, exploded causing grievous injury to the vital organs of the petitioner's son. At first the petitioner's son was taken to a private hospital. Since the injuries were too serious to be handled by the private hospital, the petitioner's son was shifted to a full-fledged hospital by name Vinodhagan Hospital at Thanjavur. The petitioner was also informed about the accident and the petitioner rushed to the spot. According to the petitioner, he himself spent about Rs.1.20 lakhs till 2.1.2009. Thereafter, at the behest of the Chief Educational Officer, the fourth respondent gave a sum of Rs.50,000/- to meet out the expenses. The District Collector also sent a message to the fourth respondent for providing medical assistance. The private medical hospital raised a bill for Rs.2,50,000/-. Shocked at such a claim, the petitioner came up with the above writ petition.

10. The second respondent viz., the District Educational Officer, has filed a counter affidavit. In the counter affidavit, the second respondent has merely stated that no cause of action has been shown to have arisen against him and that he is an unnecessary party to the writ petition. In other words, the District Educational Officer has not chosen to deal with any of the averments contained in the writ petition.

11. However, the third respondent has filed a separate counter affidavit contending inter alia that the students were allowed to participate in the N.S.S. Camp only after obtaining the consent of the parents; that at the camp site, necessary arrangements had been made and there was no need for the petitioner's son to go to ONGC site; that the petitioner's son went to the site where the ONGC pumping machine was in operation on his own volition and contrary to the warning given by other students; that the petitioner's son got injured due to his own negligent act; that the respondents were prepared to take the petitioner's son for medical treatment to the Thanjavur Medical College Hospital; that if the petitioner had agreed, his son could have received better treatment; and that there was no negligence on the part of the organisers of the N.S.S. Camp.

12. The fourth respondent-ONGC has filed a separate counter affidavit contending that the accident did not occur at their premises, but had occurred at a place 70 meters away from the premises of the fourth respondent; that the fourth respondent was

neither instrumental nor negligent; that the N.S.S. Programmer did not take care of the petitioner's son; that the site of the pumping machine was covered by bushes and the accident did not occur within the premises of the fourth respondent; that it is because of the negligence on the part of the N.S.S. Programmer that the petitioner's son sustained injuries; that at about 07:45 hours, on 19.12.2008, the pumping machine was in operation; that it was the duty of the third respondent to take care of the petitioner's son during the camp; that the fourth respondent paid Rs.50,000/- for the treatment of the petitioner's son on humanitarian grounds; that it was done on the recommendation made by the District Collector; and that the Educational Authorities and the N.S.S. Programmer were responsible for allowing the petitioner's son to go outside the camp site.

13. On behalf of the respondents 1 to 3, a set of documents have been filed. The first document is a letter of consent given by the petitioner for allowing his son to participate in the N.S.S. Camp. The second document is a report sent by the N.S.S. Project Officer of the school, addressed to the Headmaster of the school. In the said report, it is stated that the N.S.S. Camp commenced on 17.12.2008; that the Yoga Class for the children was over by about 7.45 A.M., on 19.12.2008; that the students were advised to take bath and get ready for breakfast; that at that time, a few students were not found and it came to light that they had crossed the street and went to the opposite place; since the students had to get ready for field work, the Project Officer and his Assistant went out to call those students; that at that time, a student by name Silambarasan came running and informed the Project Officer that the petitioner's son suffered injuries in the ONGC pump; that when the Project Officer rushed to the spot, he found that the student had been brought to the road side; that immediately an ambulance was summoned from the ONGC site and the petitioner's son was taken to a hospital by name Laxana at Tiruvarur; that the higher officials were informed about the accident and they also came to the hospital; that while administering blood, the Doctors at the hospital advised that the patient be shifted to the Thanjavur Medical College Hospital; that even while proceeding in the ambulance, steps were taken to provide good treatment to the petitioner's son at the Thanjavur Medical College Hospital; that the petitioner and his relatives decided to admit the patient in the private hospital and hence he was admitted to the private hospital and necessary financial assistance was also given; that when the co-students were questioned, they informed the Project Officer that the petitioner's son ignored the warning and went near the pumping machine; that the pumping machine was not fenced nor was there any warning sign not to go near the pumping machine; and that there was also no watch and ward staff near the pumping machine.

14. The handwritten letters of 3 co-students are also filed by the respondents 1 to 3. According to these letters, the petitioner's son and a few friends went out to attend to the nature's call and attempted to meddle with the pump, despite

warning and that he got injured in the process.

15. Another document that forms part of the records relied upon by the respondents 1 to 3 is the report sent by the Headmaster to the Joint Director of N.S.S. This report, by and large, confirms the report of the N.S.S. Project Officer. But it also adds that the petitioner's son ignored the warnings and went near the pumping machine.

16. The next document relied upon by the respondents 1 to 3 is a fax message sent by the District Collector to the General Manager of ONGC, requesting the fourth respondent to meet out the expenditure incurred in the treatment of the injured at the private hospital on humanitarian grounds, as the accident had occurred at their site.

17. From the pleadings contained in the form of affidavits and the documents relied upon by the respondents 1 to 3 themselves, the admitted position that emerges is as follows:-

(i) that the petitioner's son was a bona fide student of the 12th Standard, in the third respondent-school which is a Government Higher Secondary School;

(ii) that he was one of the students who was taken for N.S.S. Camp organised officially by the school, during the period from 17.12.2008 to 26.12.2008;

(iii) that on 19.12.2008, the petitioner's son sustained serious injury to his scrotum, perineum and inguinal region;

(iv) that the accident happened at the pumping machine of the fourth respondent-Corporation within the premises of the fourth respondent-Corporation;

18. In the light of the above admitted facts, the questions that arise for consideration are:-

(i) Whether the accident occurred on account of any negligence on the part of the respondents 1 to 3 or on the part of the fourth respondent ?

(ii) Whether the petitioner's son can be held to be guilty of contributory negligence ?

(iii) Whether the petitioner's son is entitled to compensation and if so the amount to which he is entitled?

QUESTION No.1:

19. The first question that arises for consideration is as to whether the accident could be attributed to the negligence on the part of the respondents 1 to 3 or to the negligence on the part of the fourth respondent. This question assumes significance in the light of the fact that the victim concerned was a minor at the time of the accident and that it was the third respondent or the Programme Officer of N.S.S., working under his control, who organised the N.S.S. Camp and the third respondent and his representatives are expected to take due and appropriate care of the minor child in their custody. Therefore, I have to find out first if they exercised due care and diligence that was expected of them or not.

20. The next aspect of the first question would be as to whether the fourth respondent had taken adequate care, at whose pumping machine, the accident had happened and had exercised due care and diligence to prevent outsiders from entering into their premises and meddling with their machine or not.

21. As I had pointed out earlier, it is the petitioner's case that his son went out of the camp site on the fateful day to attend to the nature's call. To go out to an open space to ease, is not merely the fate of the petitioner's son, but also the fate of more than 50% of the population in this country, especially those living in villages. In a report published by the B.B.C., in March 2012, it was indicated that nearly half of India's 1.2 billion people have no toilets at home, though more people own a mobile phone. The report, which was based upon Census 2011 Data on Houses, Household Amenities and Assets, reveals that only 46.9% of 246.6 million households have lavatories and that 49.8% defecate in the open. 3.2% of the population use public toilets. But, 63.2% of homes have a telephone. The Registrar General and Census Commissioner admitted "open defecation continues to be a big concern for the country, as almost half of the population do it". Therefore, the petitioner's son could not be blamed for having done something that millions of others do as a matter of routine everyday. Though the third respondent attempted to white wash the whole thing, by contending in the counter affidavit that necessary facilities had been provided at the camp site, the said averment itself is very vague. Admittedly, the camp was organised in a village. I do not know whether that village itself had toilet facilities. The third respondent has failed to plead specifically about the kind of toilet facilities provided at the camp site. The report of the Project Officer of N.S.S. dated 19.12.2008 confirms that the petitioner's son was not the only child to go out to ease in public. Other children had also gone out. Therefore, it is possible that all the children, who had gone to the camp site, did not have adequate facilities and that therefore, a few children had to go out.

22. When children are taken out of the school premises, especially to a remote place, the School Authorities are expected to exercise a much higher degree of care and caution than they are normally expected to exercise within the school campus. By allowing or at least by their failure to notice that a few children had gone out of the camp site to ease in a public place, the Educational Authorities have become guilty of negligence. To the extent that the Programme Officer of N.S.S., and the teachers, who accompanied the students, did not keep a watch on them, the Educational Authorities are guilty of negligence.

23. Coming to the fourth respondent, it is clear from the pleadings and the records (i) that the pumping machine was in operation without any watch and ward staff of the fourth respondent monitoring the same; (ii) that there was no compound or fencing around the pumping machine; (iii) that there were not even sign

boards or warning notices erected near the pumping machine to caution people from going near the machine; and (iv) that the whole area was left completely unmanned and unmanaged by the fourth respondent. Therefore, it is clear that the fourth respondent is equally guilty of not sending any warning to people, who come anywhere near the machine, when it was in operation. The claim in the counter affidavit that the machine was surrounded by bushes and that therefore no one could have gone near the machine, is completely unexpected of a Public Sector Undertaking to take as a defence in a case of this nature. It is a pity that the fourth respondent has gone to the extent of completely denying even the occurrence of the accident. Therefore, the fourth respondent should either entirely succeed or entirely fail on such a total denial.

24. The report submitted by the N.S.S. Programme Officer on 19.12.2008, a copy of which is filed by the official respondents 1 to 3, shows very clearly that the pumping machine was not fenced and that there were no warning sign boards nor were there any watch and ward staff to warn people not to come near the machine. The said report is a contemporaneous record. Unfortunately, the fourth respondent has not denied in his counter affidavit the facts disclosed in the report of the N.S.S. Programme Officer. On the contrary, there is tacit admission of these facts, in view of the fact that even according to the counter affidavit of the fourth respondent, the site of the pumping machine was covered only by bushes.

25. Therefore, I hold that both the Educational Authorities as well as the fourth respondent were guilty of negligence, in different and distinct ways. While the Educational Authorities are guilty (i) of not ensuring that the children did not go out of the camp site and (ii) of not keeping a watch on the children, who went out, the fourth respondent is guilty of allowing a dangerous machine to be in operation without any fencing or warning sign boards and without any watch and ward staff.

26. Both the learned Additional Government Pleader and the learned Counsel for the 4th respondent contended that the question as to whether there was any negligence and if so, on whose part, are all disputed questions of fact and that it is better, if the petitioner is directed to go to the civil court. Though both of them do not actually question the jurisdiction of this Court, in view of the development of law on the point, they contended that these questions can be conveniently dealt with only by civil courts.

27. But, I do not think that the pleadings in this case warrant such an option. When things speak for themselves, this Court has a constitutional social obligation not to drive the parties to the civil court, especially in cases of this nature. This is borne out by several decisions of the Supreme Court as well as this Court.

28. In M.S.Grewal vs. Deep Chand Sood {2001 (8) SCC 151},

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 {2002 (7) SCC 478}, 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 vs. State of Tamil Nadu {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. K.Subhagwanti {AIR 1966 SC 1750}, 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 {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 vs. Government of Tamil Nadu {2007 (2) MLJ 685}, K.K.Sasidharan, J., allowed the writ petition and granted compensation.

32. In Ganesan vs. State of Tamil Nadu {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.

33. Mr.K.Shanmuga Kani, learned counsel for the fourth respondent relied upon the decision of the Supreme Court in Municipal Corporation of Delhi vs. Uphaar Tragedy Victims Association {2011 (14) SCC 481}, in support of his contention that the fourth respondent cannot be imposed with any liability. But the said decision will not go to the rescue of the fourth respondent. In that case, the High Court of Delhi awarded compensation not only against the owners of the theatre where the fire accident occurred, but also made the Municipal Corporation of Delhi and the Licensing Authority liable to be pay compensation, jointly and severally with the owners. It was only that portion of the order of the Delhi High Court, which made the Municipal Corporation of Delhi and the Licensing Authority liable, that was set aside by the Supreme Court.

34. In this case, the petitioner's son was a student of a Government Higher Secondary School. There was no intermediary in the sense that a private school or a school receiving grant-in-aid from the Government is not a party. In so far as the fourth respondent is concerned, the accident happened in their premises, due to their failure to provide a fence or warning sign boards around the pumping machine. Therefore, the ratio laid down in Uphaar Tragedy case, is hardly of any assistance to the fourth respondent.

35. Therefore, on issue No.1, I hold that the Educational Authorities as well as the fourth respondent were equally guilty of negligence. The negligence on the part of the Educational Authorities lies in not taking sufficient precaution to keep the children within the camp site. The negligence on the part of the fourth respondent lies in not providing any fencing around the pumping machine and in not even putting up warning signs or notice boards, to caution the public not to go near the pumping machine.

QUESTION No.2:

36. The second question is as to whether the petitioner's son was guilty of contributory negligence. In the counter affidavit filed by the third respondent, he has chosen to put the blame on the petitioner's son (i) for having gone out of the camp area; and (ii) for having gone near the pumping machine and meddling with it, ignoring the warnings of the co-students.

37. But, the third respondent is only the Headmaster of the school and he had not gone to the N.S.S. Camp site along with the students. Hence, what he had stated in his counter affidavit is only hear say. Therefore, I cannot go completely by what he has said in the counter affidavit. The third respondent has simply stated whatever was communicated to him by the Programme Officer of N.S.S. Therefore, let me now have a look at the report submitted on 19.12.2008 by the Programme/Project Officer of N.S.S.

38. I have already extracted in a previous paragraph, the contents of the said report. All that the report states is that the Yoga Classes were over by 7.45 A.M., on 19.12.2008 and that the students were advised to take bath and get ready for breakfast. According to the Programme Officer, he started inspecting the place where food was being prepared. When he took count of the students taking bath, a few students were missing. Therefore, the Project Officer claims that he went out of the premises along with another teacher assisting him, to call the students back. At that time, one student by name Silambarasan came running, informing the Project Officer about the accident.

39. The report submitted by the Project Officer does not state that within the camp site, the students had been provided with sufficient number of wash rooms and toilet facilities. Admittedly, the place where the camp was organised, is a village by name Perungudi. The third respondent has made a very vague statement in paragraph 4 of his affidavit that "necessary arrangements were made for the participants' needs and that there was no need for the petitioner's son to go to ONGC site for nature's call". Apart from the fact that this is a very vague averment, this averment is not supported by the report submitted by the Project Officer/Programme Officer of N.S.S. on 19.12.2008. As a matter of fact, the report of the Project Officer is to the effect that a few students had left the camp site. There would have been no necessity for the students to go out of the camp site, especially at that time, when the yoga classes were just over and the students had to get ready for breakfast, if there had been sufficient number of wash rooms and toilet facilities.

40. Therefore, there are only two conclusions that one can reach out of all the above facts viz., (i) that necessary wash rooms and toilet facilities were not provided within the camp site or (ii) at least that the Project Officer and other Teachers did not take due care and diligence to ensure that the students did not go out of the camp site. In either of these two cases, the negligence is on the part of the School Authorities, who either organised a camp without providing necessary facilities or alternatively failed to ensure that the students did not go out of the camp area.

41. The fact that the petitioner was a student of the 12th Standard at the time of occurrence of the accident, is admitted. The Secondary School Leaving Certificate of the petitioner's son shows that his date of birth was 9.5.1992. Therefore, as on 19.12.2008, he had just completed 16 years and 7 months of age and hence, it is not permissible to charge the petitioner's son, who was a minor, with contributory negligence, especially when there was a failure on the part of the respondents 1 to 3 to provide wash rooms or toilet facilities in the camp site. It is said that eating in private and easing in public has been the culture of this country, while eating in public and easing in private has been the Western culture. Even the Government of India has accepted the malady of lack of toilet facilities of thousands of villages across

the country. Therefore, to accuse a minor boy of contributory negligence, for having gone out to an open area for easing, is not acceptable.

42. As a matter of fact, the report submitted by the Project Officer of N.S.S., on the very date of the accident viz., 19.12.2008 states very clearly that the place where the accident occurred, was not fenced or compounded and that there was not even a warning board or signal. Therefore, the petitioner's son, especially a minor, cannot be accused of any negligence.

43. Dr.John G.Fleming defines negligence "as a conduct that fails to conform to the standard required by law for safeguarding others (actionable negligence) or oneself (contributory negligence) against unreasonable risk or injury". In Sudhir Kumar Rana vs. Surinder Singh {2008 ACJ 1834},, the Supreme Court pointed out that a contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent.

44. In this case, the respondents plead no negligence at all on their part. Therefore, primarily they cannot allege contributory negligence against the petitioner's son.

45. As a matter of fact, the rule of contributory negligence merely reduces the liability of the wrong doer. It does not wipe out the liability in entirety. Lord Ellenborough C.J., pointed out in Butterfield vs. Forrester {1809 (11) East 60} "one person being at fault will not dispense with another's using ordinary care of himself". The principle of contributory negligence actually developed on the basis of the common law principle that one should take care of himself before he could put the blame on others. This rule eventually found its place in the Contributory Negligence Act, 1945 of England. But, the Act made it clear that where any person suffered damage as a result, partly of his own fault and partly of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damage shall be reduced to such extent as the Court thinks just and equitable. A similar statutory rule was incorporated in India first in Kerala by the Travancore Law Reforms (Miscellaneous Provisions) Act, 1949. After Kerala became an independent State, the Kerala Tort (Miscellaneous Provisions) Act, 1976 contains a similar provision.

46. In K.Samikkannu vs. Union of India {1997 (1) LW 439}, an interesting case came up before P.Sathasivam, J., (as he then was). It was a petition under Article 226 filed by the father of a 13 year old boy, seeking compensation against Neyveli Lignite Corporation, for the death of his son. It appears that during mining operations, a huge brick wall was discovered, inside the mining area, which some people thought to be an ancient cave. Therefore, despite warnings, a huge crowd gathered outside. The

petitioner's son went near the site and he was trapped in a landslide. In the writ petition for compensation, the Neyveli Lignite Corporation raised an identical defence as raised in the present case that the entire mining area was prohibited for entry to the public and that no outsider was entitled to enter into the area and that there were also clear notice boards displayed in the area. Therefore, the Corporation claimed that the death was due to the contributory negligence on the part of the boy. But rejecting the said defence, this court held that it is settled law that there is no question of applying the principle of contributory negligence to a minor.

47. Therefore, it is clear that contributory negligence cannot be attributed to children. It is true that the law as it developed in England recognises a distinction between children of tender years and adolescents, who are in a position to know and understand things. In Phipps vs. Rochester Corporation {1955 (1) All.E.R. 129}, Devlin, J., observed, "the law recognises ..... a sharp difference between children and adults. But there might well, I think, be an equally well marked distinction between 'big children' and 'little children'."

48. In Gough vs. Thorne {1966 (3) All.E.R. 398}, Lord Denning observed, "a very young child cannot be guilty of contributory negligence". Issuing a note of caution, Lord Denning went on to say: "a Judge should only find a child guilty of contributory negligence if he or she is of such an age as reasonably to be expected to take precautions for his or her own safety; and then he or she is only to be found guilty, if blame should be attached to him or her. He or she is not to be found guilty unless he or she is blameworthy". In the same case, Lord Justice Salmon indicated that the test to be applied is that of "an ordinary child". It is not a child which is a paragon of prudence or a scatter brained child.

49. Elaborating on the above test, Justice Owen said in McHale vs. Watson {1996 115 CLR 199}, that "the standard by which a child's conduct is to be measured is not that to be expected of a reasonable adult, but that reasonably to be expected of a child of the same age, intelligence and experience". The said test was applied again in Toropdar vs. D {2009 EWHC 2997}, by Justice Clarke.

50. In so far as India is concerned, the test to be applied should be of a much higher degree. There is a sharp divide in India between (i) urban children and rural children, (ii) children belonging to the higher echelons of society and lower echelons of society and (iii) children of the haves and the have nots. Though the degree of native intelligence may more or less be the same, the degree of awareness and knowledge about the useful or harmful effects of machines and equipments varies in children, from place to place and from strata to strata.

51. Keeping the above distinction in mind, if we look at

the facts of the present case, it will be clear that the petitioner's son did not go alone, but went along with his friends to the place where the accident happened. The exact manner in which the accident happened and the question as to whether there was an explosion and the question as to whether the petitioner's son actually meddled with the machine, are not really borne out by the records. But the fact that the petitioner's son went along with the other children, would go to show that he cannot be singled out and blamed for a conduct as though it was not expected a minor of that age. In such circumstances, I am of the opinion on question No.2 that the petitioner's son cannot be charged of contributory negligence.

52. Even assuming without admitting that the petitioner's son, due to his age, could be charged, on pure theory of law, with contributory negligence, I do not find any facts or material to support the same. The fourth respondent, as one of the biggest Public Sector Undertakings, ought to have conducted an enquiry of its own into the accident. Whenever any accident happens, inside a factory or an industrial establishment, it is necessary statutorily for such factory or establishment to conduct an enquiry of its own and file a report with the concerned Statutory Authority. The fourth respondent has not come out with any pleading or document to show that such an enquiry was conducted and its outcome was something that pointed out to the negligence on the part of the petitioner's son. It is needless to point out that before the petitioner's son could be accused of contributory negligence, the fourth respondent should have pleaded and proved (i) as to what exactly the petitioner's son did and (ii) as to how what was done by him was something that a person of his age was not entitled to do. But the fourth respondent has not come out clean on this score.

53. What is pitiable is that the fourth respondent has actually attempted to hide a full sized pumpkin in a handful of cooked rice. The counter affidavit of the fourth respondent proceeds on the basis as though nothing ever happened. But, the admitted averments on the part of the respondents 1 to 3 and the hospital records, very clearly show that the accident happened at the site of the fourth respondent at a pumping machine. Therefore, on the second question, I hold that the petitioner's son cannot be held guilty of negligence.

QUESTION No.3:

54. The third issue is as to whether the petitioner and his son are entitled to compensation for the injuries suffered by the petitioner's son and if so, the quantum of compensation to be paid. Once it is found that the petitioner's son suffered grievous injuries in the accident due to the negligence on the part of the respondents, it follows as a necessary corollary that the petitioner's son is entitled to compensation. Then, the next aspect is as to the quantum of compensation. Let me first take up the legal principles on which this issue is to be determined.

55. Summarising the issue on this point, a Division Bench

of this Court (to which I was a party), held in paragraphs 51 to 60 of its decision in T.Sekaran vs. State of Tamil Nadu {2010 (1) CWC 455}, 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.
>
> 54. In Benham vs. Gambling {1941 AC 157}, the House of Lords laid down certain interesting principles for guidance. They are as follows:-
>
> "(1) Figures calculated to represent the expectation of human life at various ages or averages arrived at from a vast mass of vital statistics; the figure is not necessarily one which can be properly attributed to a given individual. And in any case, the thing to be valued is not the prospect of length of days,but the prospect of a predominantly happy life. Therefore the right conclusion cannot be reached by applying the actuarial or the statistical test.
>
> (2) The age of the individual may, in some cases, be a relevant factor. For example, in extreme old age the brevity of what life may be left may be relevant, but, arithmetical calculations are to be avoided, as it is of no assistance to know how many years may have been lost, unless one knows how to

put a value on the years.

(3) It would be fallacious to assume, for this purpose, that all human life is continuously an enjoyable thing, so that the shortening of it calls for compensation, to be paid to the deceased's estate, on a quantitative basis.

(4) The ups and downs of life, its pains and sorrows as well as its joys and pleasures-all that makes up "life's fitful fever"-have to be allowed for in the estimate.

(5) There is no reason why the sum to be awarded should be greater because the social position or prospects of worldly possessions are greater in one case than in another. Lawyers and Judges may here join hands with moralists and philosophers and declare that the degree of happiness to be attained by a human being does not depend on wealth or status."

55. In Gobald Motor Service Ltd vs. R.M.K.Veluswami {AIR 1962 SC 1}, the Supreme Court pointed out that damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. The Court held (i) that at first, the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents (ii) that secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his life time and other circumstances (iii) that thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life and the amount discounted to arrive at a lump sum (iv) that fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate and (v) that fifthly, further amounts have to be deducted for the possibility of the wife dying earlier or getting remarried.

56. After pointing out the above five factors, the Supreme Court also noted that many imponderables enter into the calculation and that the actual extent of pecuniary loss may depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.

57. In C.K.Subramania Iyer vs. T.Kunhikuttan Nair {1969 (3) SCC 64}, the Supreme Court pointed out that there can be no exact uniform rule for measuring the value of human life and the measure to damages cannot be arrived at by precise mathematical calculations. It was further pointed out that the elements which go to make up the value of the life

of the deceased to the designated beneficiaries are necessarily personal to each case and consequently there can be no exact or uniform rule for measuring the value of human life. The Court added that while conjecture to some extent is inevitable, considerations of matters which rest in speculation or fancy are to be excluded.

58. In Mallet vs. Mc Monagle {1970 (AC) HL 166}, Lord Pearce termed the element of conjecture as "reasonable prophecy" and held that the method of assessing damages is to calculate the net pecuniary loss upon an annual basis and to arrive at the total award by multiplying the figure assessed as the amount of the annual "dependency" by a number of "year's purchase".

59. In Organo Chemical Industries vs. Union of India {1979 (4) SCC 573}, in paragraph 38, the Supreme Court held as follows:-

"38. What do we mean by 'damages'? The expression 'damages' is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages,, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by wrongdoing of another, (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, 'exemplary damages' are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behaviour or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money"."

60. Putting an end to speculation and prophecy in the matter of determination of compensation, Section 163A and the Second Schedule

were inserted to the Motor Vehicles Act, 1988, by Amendment Act 54 of 1994. The Second Schedule prescribes multipliers, as well as the amounts that could be awarded under different heads. In M.S.Grewal vs. Deep Chand Sood {2001 (8) SCC 151}, the Supreme Court even while following the law laid down in C.K.SubramaniaIyer as laying down the basic guidance for assessment of damage, came to the conclusion that the multiplier method stands accepted by the Apex Court in its previous decisions."

56. Keeping the above principles in mind, if we now look at the facts, the following position emerges:-

(i) The petitioner belongs to the Scheduled Caste and is an agricultural daily wage earner;

(ii) The petitioner's son was aged a little over 16 years of age at the time of the accident and he was a student of the 12th standard.

(iii) The petitioner's son was a brilliant student as borne out by the S.S.L.C. mark sheet, which shows that he secured 381 marks out of 500 in S.S.L.C.

(iv) The accident occurred on 19.12.2008 and the petitioner's son suffered serious injuries to the scrotum, perineum and the left inguinal region.

(v) The petitioner's son underwent treatment as in-patient for a period of 4 months till 11.4.2009.

(vi) Admittedly, both testis as well as the scrotum groin and penis of the petitioner's son were removed. This is seen from the discharge summary summoned by this Court directly from Vinodhagan Memorial Hospital (P) Ltd., Thanjavur, by order dated 1.10.2013.

(vii) The CT Scan of the Pelvis taken in the hospital shows that both iliac bones sustained injuries and there was displacement. Consequently, the right hip joint was dislocated with haemarthrosis.

(viii) The CT Scan report taken on 27.7.2009 at the Government District Headquarters Hospital shows that there was mal-union and reduced joint space with anteriorly rotated femur.

(ix) The petitioner's son was again admitted for Perineal Urethrostomy at Rajarajan Nursing Home and had to undergo revision.

(x) Again from 27.4.2010 to 11.5.2010, the petitioner's son had to undergo a procedure indicated as "UNCEMENTED THR WITH ACETABULAR RECONSTRUCTION WITH FEMORAL HEAD DONE".

(xi) The Certificate issued by the Government District Rehabilitation Centre, Thiruvarur on 26.5.2010, shows that the petitioner's son has actually become orthopaedically handicapped.

(xii) The disability certificate issued by the Professor of Orthopaedics of Madras Medical College shows that the petitioner's son is now suffering a permanent disability, due to "loss of sex organ/perineum, loss of urethra and arthris hip".

(xiii) The petitioner has to permanently carry a catheter, inserted through a hole in his lower abdomen.

57. The learned counsel for the petitioner has produced a photograph of the petitioner's son. It shows the petitioner's son carrying a catheter inserted through a hole in his lower abdomen. His life for ever has changed after the accident and there is no question of physical rehabilitation. The petitioner's son cannot lead a normal life and cannot have anything but a mere vegetative existence.

58. The petitioner has produced an income certificate that shows that he was earning Rs.9,600/- per year. Therefore, he would certainly not be able to meet out the medical expenses if any, in future for his son. As pointed out earlier, the petitioner's son had secured 381 out of 500 marks in the tenth standard. Since he belongs to the scheduled caste, it is possible that he took a professional course and got into a decent employment. This possibility is neither a mere hope nor illusory, since the petitioner's son's future is guaranteed by Government's affirmative action.

59. Therefore, it can be presumed that but for the accident, the petitioner's son would have completed higher education, got a decent job and earned at least Rs.10,000/- per month with career prospects. Today, due to the injuries he had suffered to the region below the hip as well as to his femur, he could not complete his studies. Whatever job he now gets, will only be restricted to the qualification that he has. The physical disability that he has suffered, will disentitle him to seek a job that would involve mobility.

60. What the petitioner's son has suffered can be said to be a permanent disablement, though it may not strictly fall within the definition of the expression under Section 142 of the Motor Vehicles Act, 1988. Section 142 of the Motor Vehicles Act declares the privation of the sight or hearing or any member or joint as a permanent disablement. It also declares the permanent disfiguration of the head or face as permanent disablement. Therefore, the fracture in the hip and the total destruction of the scrotum, perineum and inguinal region, would certainly come within the definition of permanent disablement. The disablement is also total and not partial.

61. If that is so, the petitioner's son will be entitled under the Second Schedule to the Motor Vehicles Act, 1988 to compensation, calculated by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation. The annual loss of income for the petitioner's son shall be taken as Rs.1,20,000/- (at the rate of Rs.10,000/- per month). The petitioner's son was aged about 17 years and hence, the multiplier to be adopted is 16. Even if we reduce the annual loss of income by 50%, the compensation payable would be Rs.60,000/- multiplied by 16. This works out to Rs.9,60,000/-. It must be remembered that the petitioner can never marry and lead a normal life, on account of the disability suffered. Consequently, he has to be dependent upon someone at all points of time in his life.

Therefore, he could be awarded another sum of Rs.1 lakh, for the peculiar nature of the disability suffered, by taking clue from the principles analogous to those that deal with compensation for loss of consortium. The petitioner claims to have spent Rs.1,20,000/- at the time of the accident. All subsequent expenses at the private hospital were borne by the respondents under interim orders of this Court. Therefore, I am of the considered view that the petitioner's son is entitled to a total amount of Rs.11,80,000/- as compensation.

62. Having decided the quantum of compensation, I should now see as to whether the respondents 1 to 3 alone should be directed to pay the same or whether the fourth respondent alone should be directed to pay or whether both parties should be directed to share the burden and if so, in what proportions.

63. I have already found that the respondents 1 to 3 as well as the fourth respondent are guilty of negligence. Therefore, there is no doubt about the fact that the State as well as the fourth respondent are obliged to pay compensation.

64. But, the proportion, in which, the compensation fixed by me in paragraph 61 above, is to be shared would depend upon the degree of culpability of both parties (namely respondents 1 to 3 and the fourth respondent). It is seen from the circumstances, in which, the accident had happened, that the negligence on the part of the School Authorities was only at the initial stage. The negligence on the part of the fourth respondent is more, in view of the fact that they were operating a pumping machine, in an open field, which neither had a fencing nor had warning sign boards nor any watch and ward staff. Therefore, the apportionment of compensation in the ratio of 1 : 3 would meet the ends of justice. In other words, the respondents 1 to 3 should pay one-fourth of the total amount of compensation and the fourth respondent should pay three-fourths. This works out roughly to Rs.3,00,000/- to be paid by the State Government and Rs.8,80,000/- to be paid by the fourth respondent.

65. The Companies Act 1956 was recently replaced by the Companies Act, 2013. One of the important features of the New Act is the mandate for companies of a certain size and minimum profitability to undertake Corporate Social Responsibility. In a study conducted by the Business Standard in January 2013, it was found that 457 out of 500 companies on the BSE 500 Index will have to provide for Corporate Social Responsibility. It was reported therein that the Oil and Natural Gas Commission, which is the fourth respondent herein, will have to spend around Rs.405 Crores a year, towards fulfilling their Corporate Social Responsibility, if we go by the average net profit that they earned in the preceding three years. Therefore, the fourth respondent should take this also as part of Corporate Social Responsibility initiative and not make an attempt to shift the blame on the State Government exclusively.

66. The learned counsel for the petitioner contended that

the petitioner's son is entitled to additional compensation in terms of the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. But, I do not think that the Act is of application to cases of this nature. The financial relief contemplated by Rule 12(4) read with the Schedule under Annexure I to the Rules framed under the Act, is applicable only in respect of victims of atrocity. The word "atrocity" is defined by Section 2(1)(a) to mean an offence punishable under Section 3. The accident that has happened to the petitioner's son will not come within any one of the clauses contained in Sub-Section (1) or (2) of Section 3. Therefore, the claim of the petitioner in this regard is wholly unsustainable.

67. The learned counsel for the petitioner also sought a direction to the respondents to provide employment to the petitioner's son. But, I do not think that a direction to this effect can be given by this Court. Employment in the State Government is governed by Statutory Rules issued in terms of the proviso under Article 309 of The Constitution. Similarly, the fourth respondent is a public sector undertaking and any employment therein should also follow the Rules and Regulations. In a claim for compensation, a direction to provide employment cannot be granted.

68. Therefore, in fine, the writ petition is allowed directing the first respondent, to pay on behalf of the respondents 2 and 3, an amount of Rs.3,00,000/- (Rupees three lakhs only) towards compensation. The fourth respondent is directed to pay a sum of Rs.8,80,000/- (Rupees eight lakhs and eighty thousand only). The respondents 1 and 4 are directed to pay these amounts within a period of four weeks from the date of receipt of a copy of this order. If the respondents 1 and 4 fail to make such payment within the time stipulated above, they shall become liable to pay interest at the rate of 7.5% per annum from the date of expiry of the period stipulated herein. There will be no order as to costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CS-IV)
Dated: 10.03.2014

//True Copy//

Sub Assistant Registrar

To
1.The District Collector, Collectorate, Tiruvarur.
2.The District Educational Officer, DEO Office, Thiruvarur.
3.The Head Master, Government Higher Secondary School, Pulivalam, Thiruvarur District.
4.The Assistant Manager, Oil Natural and Gas Commission, Niravi, Karaikkal, Pondicherry Union.

1 CC to Mr.P.Vijendran, Advocate SR.No.10105

WP.No.61 of 2009

UG(CO)
PSI (10.03.2014)