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Order QR

W.A.No.821 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.821 of 2026
CNR:{HCMA011848122025}
and C.M.P.No.8637 of 2026



Case QR

1. The Secretary to Government
Health Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
2. The Director of Health Services
Department of Rural Welfare,
DMS Office Campus, Anna Salai,
Teynampet, Chennai-600 006.
3. The Joint Director of Medical Services
DMS Office Campus, Anna Salai,
Teynampet, Chennai-600 006.
- 4.The Dean
Arcot Government Hospital,
Arcot, Ranipet District-632 503.

Appellant(s)

Vs



W.A.No.821 of 2026

Rihana
W/o.Late Yassen,
No.18, Kathiri Nagar, Thajpura,
Arcot Taluk,
Ranipet District-632 521.

Respondent(s)

PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 19.10.2024 passed by the learned Single Judge in W.P.No.34311 of 2023.

For Appellant(s): Mr.C.A.Ramanan,
Government Advocate

For Respondent(s):Ms.J.Manthagini
for Mr.R.Sunil Kumar

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The State has filed this appeal against the order of the learned Single Judge dated 19.10.2024 in W.P.No.34311 of 2023, by which the learned Single Judge directed the Dean, Arcot Government Hospital, to pay Rs.3,00,000/- as compensation to the writ petitioner/respondent herein and further directed the appellants to give free education to her fourth child and to bear the cost of books, stationery, uniforms and other school expenses.

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2.1. The nub of the case is that the respondent herein married one Yassen in 2012. They had two daughters and a son. On 25.09.2018, she underwent puerperal sterilisation by tubectomy at the Arcot Government Hospital. At the end of 2021, she conceived again. On 03.06.2022, she gave birth to a female child. On 10.06.2022, the respondent underwent another sterilisation surgery by the same method. Her husband died of a heart attack on 19.09.2023.

2.2. It is plea of the respondent herein that the pregnancy was solely due to the failure of the first surgery and that the hospital was negligent. She sent a representation on 14.11.2023 seeking compensation. As the same did not evoke any response, the respondent herein filed the writ petition for a mandamus directing the Dean to pay appropriate compensation for medical negligence.

3.1. The State opposed the writ petition on the grounds that before the surgery, the respondent herein gave a written consent accepting that the operation could fail and that she would make no claim if it did; that the surgeon was well trained and experienced; that the family planning operations are not fully effective; that the family planning scheme itself records a small risk of failure, about 0.5%,



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even when no one is negligent; and that upon becoming pregnant, the respondent came to the hospital and the doctor advised her to terminate the pregnancy, which was then nine weeks and four days old, but she refused. It is pleaded that, under the scheme, termination is done free of cost.

3.2. The State placed reliance on the decisions of the Supreme Court in *State of Punjab v. Shiv Ram*¹ and *Civil Hospital v. Manjit Singh*² to contend that a claim for compensation cannot succeed without proof of negligence. The State also pointed out that the Division Bench had stayed the order passed by the learned Single Judge in *Dhanam v. Secretary to Government*³, on which the respondent herein placed heavy reliance.

4. The learned Single Judge relied on *Dhanam* (supra), which in turn relied on *State of Haryana v. Santra*⁴ and yet another decision in W.P.(MD).No.4505 of 2016, dated 28.04.2023 and held that since the writ petitioner/respondent herein became pregnant despite the surgery, "*the general presumption would be that there are lapses in*

¹ (2005) 7 SCC 1

² Order dated 6.9.2022 in Civil Appeal No.6208 of 2022

³ Order dated 25.1.2022 in W.P.No.22349 of 2018

⁴ (2000) 5 SCC 182

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performance of such surgery." The learned Single Judge added that the burden was on the appellants herein to show there was no lapse.

The State's plea that such failures occur in 5 out of 1000 surgeries was held to be "*generic in nature*". Considering that the respondent's husband had died and she was a single mother, the learned Single Judge awarded Rs.3,00,000/- and ordered free education for the fourth child.

5.1. Learned Government Advocate appearing on behalf of the appellants submitted that medical negligence is a question of fact, which can only be established based on evidence in a trial, and it cannot be decided in a writ petition under Article 226 of the Constitution of India.

5.2. It is further submitted that the learned Single Judge overlooked the 0.5% risk of failure, the consent form, and the fact that the respondent herein chose to continue the pregnancy when she could have terminated it. He added that failure of a family planning operation because of natural recanalisation of the fallopian tubes is not medical negligence.

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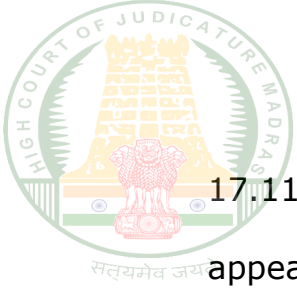
5.3. He also submitted that, following the Supreme Court's directions, the Government has fixed the quantum of compensation for failure of sterilization at Rs.60,000/- vide G.O.(Ms) No.173, dated 31.5.2022, but the learned Single Judge did not consider the said Government Order.

6. Learned counsel for the respondent reiterated the submissions that weighed with the learned Single Judge and prayed for dismissal of the appeal.

7. The moot question that arises for consideration is whether the learned Single Judge could decide the question of negligence and award compensation of Rs.3,00,000/- in a writ petition and, if not, what relief is the respondent herein entitled to?

8.1. The order passed by the learned Single Judge leans on the decision in *Dhanam* (supra). The appeal against the said decision has since been decided by a Division Bench of this Court in *The Secretary to Government, Health and Family Welfare Department v. Dhanam*⁵. The learned Single Judge noted only the interim stay granted on

⁵ Judgment dated 9.7.2024 in W.A.No.2506 of 2022

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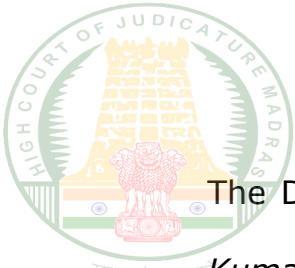
17.11.2022 by the Division Bench. However, the fact remains that the appeal had been finally decided more than three months before the impugned order was passed. The Division Bench allowed the appeal in part. It set aside the direction to pay Rs.1,20,000/- every year till the child turned 21. It held that *"This Court sitting under Article 226 of Constitution of India, cannot go into the above claim of compensation and decide the matter."*

8.2. In the said decision, the Division Bench also referred to a decision of the Delhi High Court in W.P.No.8580 of 2020, dated 21.3.2023, which it quoted in paragraph 10 as under:

"Cases claiming compensation due to Medical Negligence require a determination of disputed questions of fact. The said determination ought to be in appropriate jurisdiction and not in writ jurisdiction."

The Delhi High Court had also quoted its Division Bench judgment dated 3.2.2015 in LPA No.55 of 2015 [*Kamla Devi v. Union of India*], wherein it was held that:

"Where a claim intrinsically depends upon proof of an act of medical negligence, such a claim cannot be determined in exercise of a writ jurisdiction."

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The Delhi High Court also noted the Supreme Court's ruling in *Harish Kumar Khurana v. Joginder Singh*⁶, wherein it was held thus:

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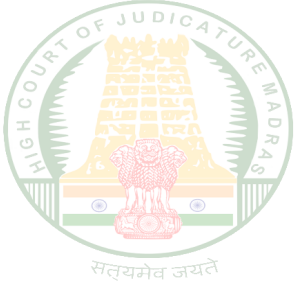
"...in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent."

8.3. On the facts of a sterilisation failure, the Division Bench, in the said decision, held in paragraph 12 as under:

*"12... considering the risk factor of 0.5% during sterilization operation is involved, it cannot be construed that the Medical Officer had performed operation in a negligent manner. **If at all the first respondent/writ petitioner is having any right, he can approach the competent Civil Forum seeking compensation.**"*

8.4. The Division Bench left the Rs.3,00,000/- and the free education direction in *Dhanam* untouched for the reason that the said conditions had already been complied with. It then added, in paragraph 13(iv) that *"It is also made clear that this order will not a precedent to any other cases in future, seeking such compensation, as ordered by the writ court."*

⁶(2021) 10 SCC 291

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8.5. We are, therefore, of the firm view that the decision in *Dhanam* (supra) cannot be used as authority for awarding such compensation in a writ petition. The learned Single Judge relied on a decision that had already been set aside partly. The non-consideration of such vital fact, by itself, is a gross error.

9.1. The issue as to whether negligence can be decided in a writ petition was recently settled by the Supreme Court in *Karnataka Power Transmission Corporation Ltd v. Rekha & Ors.*⁷. The said case arose from deaths and injuries caused by electrocution. The High Court had awarded compensation in writ petitions. The Supreme Court set aside the awards because the claims turned on disputed facts. The Supreme Court emphasized that in cases where there are disputed questions of fact, the High Court may decide to decline exercising writ jurisdiction and that negligence in such cases had to be established first by the claimants. The Supreme Court, accordingly, quashed the awards of the Single Judge and the Division Bench and directed the claimants to approach the proper forum.

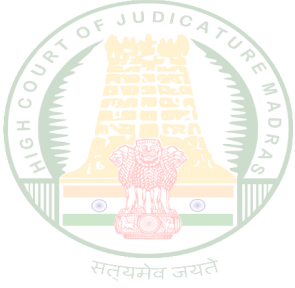
⁷2026 INSC 847

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9.2. We must also note the concurring opinion of His Lordship, Nongmeikapam Kotiswar Singh, J., who explained when a writ court

should step back. In paragraph 3, it says the dispute must be:

"3. The moot question which arises is what constitutes a "disputed question of fact" of a kind that ought to persuade a writ court to keep its hands off. In my considered view, it must be a genuine and substantive conflict between the parties on a plea which cannot be satisfactorily resolved on the material already on record, and whose resolution would necessarily require a deeper probe into the facts, ordinarily involving the recording of evidence, oral testimony, and cross-examination, these being the hallmarks of adjudication in civil or criminal proceedings. Where, on the other hand, such disputed facts can be resolved without undertaking detailed and elaborate exercise, whether because the claim is not seriously or genuinely disputed, or because the relevant fact in issue is easily discoverable without extensive scrutiny of the evidence on record, the mere fact that a party chooses to controvert certain facts or raises a dispute cannot, by itself, be a ground to shut out a writ petition. It is only where the dispute involves complex or serious questions of fact that cannot simply and easily be resolved by reference to the



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***oral or documentary material already available
that the exercise of writ jurisdiction ought, as a
matter of prudence, to be declined.”***

[emphasis supplied]

10. This case falls squarely in the category alluded to supra involving disputed questions of fact. The State has raised real and serious factual pleas as under:

- (a) Whether the surgery was done with proper skill and care?
- (b) Whether the pregnancy resulted from natural recanalisation of the tubes, which is a known risk even when the surgery is done well?
- (c) Whether the respondent herein reported to the hospital within two weeks of missing her period, as the consent form required?
- (d) Whether the doctor advised her to terminate the pregnancy at nine weeks and four days, and whether she refused?
- (e) What effect the signed consent form has on her claim?

The aforesaid factual pleas cannot be settled on affidavits. They need

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the evidence of the doctor, the hospital records, and probably expert medical opinion. They need cross-examination. A writ court is, in our firm opinion, not equipped to undertake such roving inquiry.

11. The order passed by the learned Single Judge records that a pregnancy after sterilisation raises a "*general presumption*" of lapses by the doctor, and that the State must prove otherwise. This is not the law. In *State of Punjab v. Shiv Ram* (supra), which the learned Single Judge extracted in the order, the Supreme Court said:

"... merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery."

[emphasis supplied]

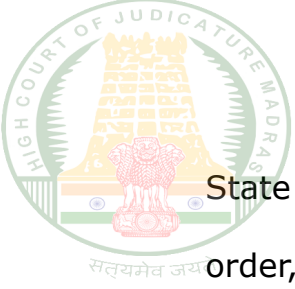
12. The decision in *Harish Kumar Khurana* (supra) is to the same effect. The burden of proving negligence is on the person who alleges it. The State's reliance on the known risk of failure, recorded in the scheme itself, cannot be brushed aside as "*generic*". It is a medically

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recognised fact. The Standards and Quality Assurance in Sterilization Services, which the Division Bench extracted in *Dhanam* (supra), state that female sterilisation carries a small risk of failure, about 5 in 1000 in the first year. It is also stated that a woman who misses her period should report to the health facility within two weeks, and that she should then be offered free termination of pregnancy and repeat sterilisation.

13. The sympathy the learned Single Judge felt for the respondent herein is understandable. She lost her husband and is raising her children alone. However, sympathy cannot stand in for proof of negligence. The directions of the learned Single Judge cannot be sustained.

14. The aforesaid finding of this Court does not leave the respondent herein without a remedy. The Government has a scheme for exactly this situation. It is the Family Planning Indemnity Scheme, introduced by the Government of India. Under it, compensation is paid when a sterilisation fails. By G.O.(Ms) No.173, Health and Family Welfare (R2) Department, dated 31.05.2022, the State doubled the compensation payable to sterilisation acceptors, with the Centre and

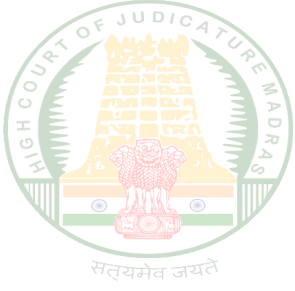
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State sharing the cost equally. Under Section 1C of the table in that order, the compensation for "Failure of sterilization" is Rs.30,000/- from the Government of India and Rs.30,000/- from the State, a total of Rs.60,000/-. The respondent herein is, therefore, entitled to the enhanced sum of Rs.60,000/-.

15. If the respondent herein believes she has a claim for more, because of negligence on the part of the doctor or the hospital, she must prove it before a civil court, where both sides can lead evidence. We make it clear that we have not examined, and express no opinion on, whether there was any negligence.

In the result, the writ appeal is disposed of with the following directions:

- (i) The order dated 19.10.2024 passed by the learned Single Judge in W.P.No.34311 of 2023 is set aside. The direction to pay compensation of Rs.3,00,000/- and the direction to give free education and bear the educational expenses of the fourth child are set aside;
- (ii) The compensation payable to the respondent herein is restricted to Rs.60,000/-, as provided in G.O.(Ms)



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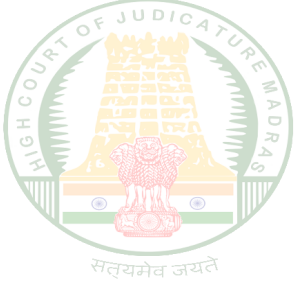
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No.173, Health and Family Welfare (R2) Department, dated 31.05.2022, for failure of sterilisation. The appellants shall pay this amount to the respondent herein within four weeks from the date of receipt of a copy of this judgment;

(iii) The respondent herein is at liberty to approach the competent Civil Court within eight weeks from the date of receipt of a copy of this judgment, if she intends to claim compensation over and above Rs.60,000/-. In that event, the time spent in prosecuting the writ petition and this appeal shall be excluded in computing limitation.

(iv) If the respondent herein files such a suit, the Civil Court shall decide it on its own merits and on the evidence, without being influenced by any observation in this judgment or in the order of the learned Single Judge. The payment of Rs.60,000/- under the Government Order will not stand in the way of her claim, though it may be taken into account when the final award is made.

(v) There will be no order as to costs.



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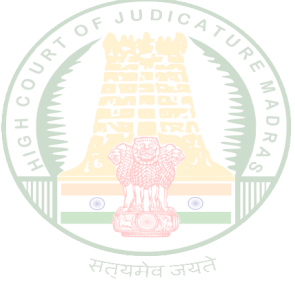
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(vi) Consequently, connected miscellaneous petition stands closed.

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(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN,J)
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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