

**W.P.(MD).No.10436 of 2021
and
W.M.P.(MD).14402 of 2020**

N.ANAND VENKATESH,J.

Mr.M.Lingadurai, learned Government Advocate takes notice for the respondents.

2. A girl baby, who was just 14 days old, was under medical observation, since she was suffering from Congenital Anomalies at the fourth respondent Government Hospital. The parents of the toddler had gone out and when they returned to the ward where the child was given treatment, to their shock and dismay, it was found that a portion of the left hand thumb was severed and it was lying in the floor and the child was profusely bleeding due to severance of a portion of the left hand thumb. The parents found that a Staff Nurse at the Government Hospital while removing the paediatric venflon (cannula) from the left thumb, which was wrapped with the surgical tape, had cut a portion of the left hand thumb of the child. Immediately, it was informed to the Doctors and the Doctors had acted with alacrity and they conducted an emergency

surgery by placing the cut portion in the left hand thumb and it was sutured. It is seen from records that the child is recuperating from this grievous injury.

3. The learned Government Advocate appearing on behalf of the respondents submitted that Panel of Doctors were appointed by the Dean of the fourth respondent Hospital and they were regularly monitoring the child. That apart, an operation has been performed by the Plastic Surgeon accompanied by a Paediatric Surgeon. The learned Government Advocate further submitted that an Enquiry Committee was constituted and an enquiry was conducted where the concerned staff nurse and the parents were enquired. On completion of the enquiry, a report was also sent to the second respondent on 09.06.2021. The learned Government Advocate further submitted that the request made by the parents for compensation has already been forwarded to the Government and it is under active consideration.

4. The learned counsel appearing for the petitioner submitted that even though an operation was performed, the Doctors were not able

to properly refix the thumb and as a result of the same, the child is facing a permanent disability. The learned counsel further submitted that the Government can shift the child to a Multi-speciality Hospital, where an attempt can be made to conduct a specialized surgery to ensure that the child is brought back to normalcy.

5. On a *prima facie* consideration of the materials placed before this Court, the parents of a new born child being made to helplessly watch a portion of the left hand thumb of the child lying in the floor and the child writhing in pain, is such a horrifying experience, which would have caused lot of pain and suffering and mental agony.

6. In cases of this nature, this Court has to necessarily apply the strict liability theory which is otherwise called as Rylands Vs. Fletcher Doctrine. The incident taken as such, *prima facie* shows that there is negligence and hence, some interim compensation must be paid by the Government to the parents of the child. Such positive response from the Government is expected in a welfare State. Already, a recommendation has been made for payment of compensation and therefore, this Court

deems it fit to direct the first and second respondents to pay an interim compensation of Rs.75,000/- (Rupees Seventy Five Thousand only) to the parents of the child, within a period of four (04) weeks from the date of receipt of a copy of this order.

7. There shall be a further direction to the second respondent to get the child admitted in a Multi-Speciality Hospital in order to make an attempt to conduct surgery and ensure that the child does not permanently suffer due to the loss of a portion of the left hand thumb.

8. The second and third respondents are directed to file a counter affidavit in this case.

9. Registry is directed to post this case under the caption "For Orders" on **26.07.2021**.

23.06.2021

tsg

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NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**Interim Order made in
W.P.(MD).No.10436 of 2021
and
W.M.P.(MD).No.8113 of 2021**

23.06.2021