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WA No.661 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WA No.661 of 2021
and CMP No.3457 of 2021

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home Department, Fort St. George,
Chennai 600 009.

2. The Secretary to Government,
Transport Department, Fort St. George,
Chennai 600 009.

.. Appellants

-vs-

1. S.Krishnswamy

2. The Chairman and Managing Director,
Tamil Nadu State Transport Corporation,
Chennai.

3. The Depot Manager,
Tamil Nadu State Transport Corporation,
Sathyamangalam.

.. Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 02.08.2016 passed in W.P.No.40800 of 2002.

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For the Appellants

: Mr.P.Kumaresan
Addl. Advocate General
assisted by Mrs.R.Anitha,
Spl. Govt. Pleader.

For the Respondents

: Mr.T.M.Hariharan
for R-1

* * * * *

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.P.Kumaresan, learned Additional Advocate General assisted by Mrs.R.Anitha, learned Special Government Pleader for the appellants and Mr.T.M.Hariharan, learned counsel for respondent No.1.

2. The present respondent No.1/original petitioner filed W.P.No.40800 of 2002 seeking compensation of Rs.25,00,000/- (Rupees twenty five lakhs only) for the loss of vision, pain and suffering and permanent disability caused to him by the injury inflicted on him on 01.07.2001 while travelling in the bus owned by the original respondent Nos.2 to 4.

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3. Shorn of unnecessary details, the facts relevant to decide the
lis are:

(a) The petitioner is an employee of The Vysya Bank Limited and was working as ALPM Operator. The petitioner was required to travel by the bus owned by the original respondents 2 to 4 on 01.07.2001 from Coimbatore to Madurai. While travelling in the said bus on 01.07.2001, some miscreants threw stone on the bus. The petitioner was injured. The petitioner was admitted in the hospital as an in-patient. Necessary tests were taken. Upon examination, it was found that the optic nerve of the petitioner was totally damaged and there was traumatic globe rupture called Lid pore and other injuries. Surgery was conducted and the left eye was removed and in that place, temporary dummy eye was fixed. The petitioner had suffered external injuries on the left cheek as well as on the eyebrow, his face was disfigured and developed persistent headache. It is stated that the petitioner had suffered 40% permanent disability. The petitioner claimed a total sum of Rs.25,00,000/- (Rupees twenty five lakhs only) as compensation for the medical expenses incurred, pains and sufferings and was also required to undertake short spells of treatment and got admitted to the hospital 3-4 times.

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(b) The learned Single Judge found that the political party had given a call for the bandh on 02.07.2001 from 6.00 a.m. to 6.00 p.m. The State and the Corporation assured that all precautions and measures are undertaken. The learned Single Judge accepting the claim of the petitioner partly allowed the writ petition and granted compensation of Rs.10,00,000/- (Rupees ten lakhs only). The said judgment is assailed by the State by way of instant appeal.

3. The learned Additional Advocate General submits that the call for the bandh was for 02.07.2001 from 6.00 a.m. to 6.00 p.m. The State would be liable if some untoward incident has taken place on 02.07.2001 during the period of bandh. The State would not be liable for any injuries sustained by the petitioner before the period of bandh. The learned Additional Advocate General further submits that the persons on whom the criminal case was filed were also acquitted. According to him, the State could not have been saddled with the responsibility to pay the compensation amount. The petitioner has also not proved the actual loss sustained.



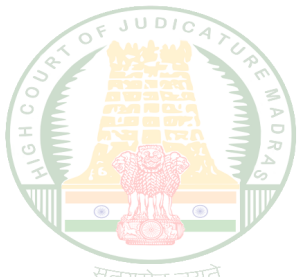
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4. The learned counsel for the first respondent/writ petitioner supports the order of the learned Single Judge and submits that the State is vicariously liable for the injuries sustained by the petitioner.

5. During the course of argument, the learned Additional Advocate General placed reliance on the affidavit filed by the original third respondent, that is, the Managing Director, Tamil Nadu State Transport Corporation. The third respondent has specifically admitted that following the arrest of the erstwhile Chief Minister, there were untoward incidents causing obstruction to the operation of the vehicles and damage to the vehicles of the public on 30.06.2001, 01.07.2001 and 02.07.2001. The bandh was called for in connection with the aforesaid arrest. It was published that the buses would ply between 6.00 a.m. and 6.00 p.m. and on those dates, police protection was also given.

6. It has been rightly observed by the learned Single Judge that assurance was given about the police protection and that the buses would be operated regularly. In the counter, the third respondent has specifically admitted about the untoward incidents taking place on



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30.06.2001, 01.07.2001 and 02.07.2001. The untoward incident, such as damage to the public vehicles, was witnessed by the original respondents on 30.06.2001. The incident in question was on the evening of 01.07.2001. The State could have taken necessary precautionary measures more particularly when, in fact, two days prior to the date of bandh, it witnessed the damage to the public vehicles being caused.

7. We live in a welfare State and not a police State. The State is required to protect its citizens. It has been admitted on record that the untoward incident had taken place because of the arrest of the erstwhile Chief Minister and damage was caused to the vehicles of the public on 30.06.2001, 01.07.2001 and 02.07.2001. The petitioner was a victim of such incident. The petitioner was travelling in a public vehicle of the Corporation which is under the appellant No.2. The factum of the petitioner getting injured is admitted in the counter filed by original respondent No.3. It is also admitted that when the bus had crossed Paraval, a big stone pierced through the windshield of the bus at 11.20 p.m. and hit the petitioner. The petitioner was taken to the hospital by the driver and the conductor.



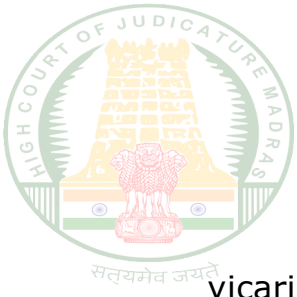
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The vehicle was also damaged causing loss to the extent of Rs.4,000/-. A complaint was lodged by the driver with Samayanallur Police Station against the rider and pillion rider of the vehicle on which the miscreants were travelling. The factum of the petitioner being admitted in the hospital is also not disputed; on the contrary, admitted by respondent No.3.

8. The petitioner has sustained serious injuries. His one eye was required to be removed permanently. The other injuries were also sustained by him. Permanent Disability Certificate is also on record certifying 40% permanent disability. The learned Single Judge awarded Rs.10,00,000/- (Rupees ten lakhs only) as compensation and further granted liberty to the petitioner to approach the Civil Court if he seeks enhancement of compensation.

9. The State had failed to provide for necessary protection though was well aware of the untoward incidents taking place. The learned Single Judge has considered all the aspects in the correct perspective. Apart from providing security to the citizens, it is also the duty of the State to maintain law and order. The State would be



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vicariously liable for its inaction and/or not taking proper care.

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10. The State would be liable along with the political party in question who had called for the Bandh. The said political party was not arrayed as a respondent, however, that would not make much difference. The State under any circumstances would be liable to pay the compensation amount. The concept of strict liability and the vicarious liability is rightly invoked. The writ appeal is bereft of any merit.

In the light of that, the writ appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed. The compensation as directed by the learned Single Judge shall be paid by the appellants within a period of six weeks from today.

(S.V.G., CJ.)

(D.B.C., J.)

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Neutral Citation : Yes/No

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