**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 28.06.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.6039 of 2024**

Arjunan ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.

2.The Director,
Directorate of Medical and Rural Health Service,
359, Annasalai, DMS Compound,
Teynampet, Chennai-600 006.

3.The District Collector,
O/o.The District Collector,
Trichy District.

4.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Tiruchirappalli, Trichy District.

5.The Superintendent of Police,
O/o. the Superintendent of Police,
Trichy-620 020.

6.The Inspector of Police,
Manapparai Police Station,
Trichy District.
(Crime No.336/2023).

7.Subramani

8.Arun

9. Aadhavan ... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondent No.1 to pay a sum of Rs.25,00,000/- as a compensation amount for the illegal management of medical waste by Respondent Nos.7, 8 and 9 at Primary Health Centre (PHC), Manapparai, Trichy considering the petitioner's representation dated 04.11.2023.

For Petitioner : Mr.G.Sujeeth

For Respondents : Mr.P.Thambi Durai,
Government Advocate for R1 to R4.

Mr.Albert James,
Government Advocate (Crl. Side) for R5 & R6.

**ORDER**

The petitioner is a daily wager. His wife passed away some time back. He had a son and two daughters. The elder son / Kalaiyarasan was working as a domestic breeding checker at Government Primary Health Centre, Maravanur, Manapparai, Trichy District. The petitioner's case is that on 26.06.2023, his son was sent to the new Government Primary Hospital Centre, Puthanatham and asked to dispose of the discarded medical waste along with garbage at the

backyard of the hospital. When the petitioner's son was carrying out the instruction, the expired medicines exploded and suffered 80% burn injuries on his entire body. He was shifted to the Government Hospital, Manappari. The treatment proved futile and he died on 29.06.2023. The petitioner contends that the occurrence took place on account of the negligence of the authorities. He seeks compensation.

2.The seventh respondent has filed counter affidavit. It is stated that enquiry was ordered and as many as eight officials were enquired. It is claimed that the petitioner's son on his own had burnt the medical waste. He did not obtain any instruction or guidance from any superior official. The respondents further claim that they are adopting the requisite procedure for disposing the bio-medical waste in urban Primary Health Centre, Manappari and that they cannot be fastened with any liability for the accident. The learned Government Advocate reiterated all the contentions set out in the counter affidavit and sought dismissal of the writ petition.

3.I carefully considered the rival contentions and went through the materials on record. The occurrence took place at around 01.00 P.M on 26.06.2023. The petitioner's son was taken to Government Hospital,

Manapparai and thereafter shifted to Mahathma Gandhi Memorial Government Hospital, Trichy. At around 04.40 P.M, medico-legal intimation was sent by the hospital authorities to the jurisdictional magistrate. Shri.R.Balaji, Judicial Magistrate No.3, Trichirappalli recorded the dying declaration at around 04.50 P.M on the same day. Dr.N.Priya, Assistant Professor, Department of General Surgery, KAPV GMC and MGM G.H, Trichy certified that Kalaiyarsan was conscious, oriented and was in fit state of mind to give dying declaration. To a specific question from the Judicial Magistrate as to why he was in such condition, Kalaiyarasan answered as follows :

> *"உங்களுக்கு எப்படி இந்த நிலைமை ஏற்பட்டது?*
>
> *நான் மணப்பாறை பழைய G.H அருகே காலை 11 மணியளவில் என்னை சாமான் எடுத்து வைக்க வேலைக்காக கூப்பிட்டு இருந்தார்கள். நூான் கொசு ஒழிப்பு பணியாளராக பணிபுரிந்து வருகிறேன். இன்று காலை 11 மணியளவில் மணப்பாறை பழைய G.Hல் குப்பைகளை கூட்டிவிட்டு இருந்தார்கள். என்னை பத்த வைக்க சொன்னார்கள். அதனால் நான் Hospital-ல் உள்ள G.H Sanitizer டப்பாவை எடுத்து குப்பைகளில் ஊற்றினேன். அதை பத்த வைக்கும் போது என் மீது நெருப்பு பற்றிவிட்டது. Dress-ல் பிடிச்சிருச்சு. பிறகு Health Inspector ஆதவன் அவர்கள் வந்து ஒரு துண்டை போற்றிவிட்டார்கள். அதன்பிறகு என்னை மணப்பாறை G.H-க்கு நேராக அழைத்து சென்று விட்டார்கள். அதன் பிறகு இன்று மதியம் என்னை திருச்சி G.H-க்கு அழைத்து வந்து விட்டார்கள்."*

After Kalaiyarasan succumbed to the burn injuries on 29.06.2023, Crime No. 336 of 2023 was registered on the file of Manappari Police Station.

4.The occurrence had taken place in the afternoon. The death took place three days later. Thiru.Balaji, learned Judicial Magistrate No.III, Tiruchirappalli had taken the dying declaration on 26.06.2023. Nemo moriturus praesumatur mentire is the basis for the doctrine of dying declaration. This maxim means “a man will not meet his Maker with a lie in his mouth”. It is enshrined in Section 26 of the Bharatiya Sakshya Adhiniyam, 2023. Its counterpart was Section 32 of the Indian Evidence Act, 1872. The Hon'ble Supreme Court in ***Uttam v. State of Maharashtra (2022) 8 SCC 576*** laid down the principles to be kept in mind while considering dying declarations. It was held that there is neither rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration. If the court is satisfied that the dying declaration is true and voluntary, it can be acted upon without corroboration. The dying declaration produced before me more than passes muster.

5.Kalaiyarasan was employed as domestic breeding checker at Government Primary Health Centre, Maravanur. He was only engaged in mosquito eradication. The occurrence had taken place in the backyard of Urban Primary Health Centre, Manaparai which is functioning in the premises of Government Hospital, Manaparai. Section 119 of BSA, 2023 (corresponding to

Section 114 of Indian Evidence Act) enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. I can safely conclude that without instruction from superiors, Kalaiyarasan would not have gone to Urban Primary Health Centre, Manaparai for garbage disposal. This conclusion can be easily made in view of the dying declaration made by him. Kalaiyarasan further stated that he was asked to burn the garbage.

6.Res ipsa loquitur is an important principle of law. In P.P.Udeshi v. Ranjith Ginning and Pressing Company (1977) 2 SCC 745, it was held thus :

> "6.The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself' or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then

be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states: "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence 'tells it own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care....."

In ***Sunder v. State of Rajasthan*, (1974) 1 SCC 690,** it was held as follows :

> **9.** The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim *res ipsa loquitur* is resorted to when an accident is shown to have occurred and the cause of the

accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim *res ipsa loquitur* applies.

**10.** The maxim is stated in its classic form by Erle, C.J.: [*Scott* v. *London & St. Katherine Docks*, (1865) 3 H&C 596, 601]

"... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle [*Ballard* v. *North British Railway Co.*, 1923 SC (HL) 43] . The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, *The Law of Torts*, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or

ought to be within the knowledge of the defendant (see *Barkway* v. *S. Wales Transo* [(1950) 1 All ER 392, 399] ).

In the counter affidavit, it is admitted that the deceased was working as domestic breeding checker mazdoor on daily wages basis at Maravanoor and that he was a seasonal worker to control dengue. The respondents failed to explain as to how such a person was engaged in garbage disposal. A bald statement is made that Kalaiyarasan on his own without any instruction or order from higher officials handled the garbage and set fire. According to the respondents, it was an unfortunate accident. Obviously, Kalaiyarasan was not trained to dispose of the garbage. In the affidavit filed in support of the writ petition as well as in the earlier complaint made by the petitioner, it has been alleged that garbage directed to be disposed of contained expired medicines and bio-medical waste. In the counter affidavit, it has been generally stated that bio- medical waste is being properly disposed of and that there was a subsisting agreement with a private agency. The respondents have not elaborated on the contents of the garbage. Unless some kind of inflammable substances were in the garbage heap, it would not have suddenly caught fire so as to envelope Kalaiyarasan in flames. Photographs of the victim have been enclosed in the typed set of papers. It is seen that his entire front portion including face had suffered severe burns. Applying the principle of res ipsa loquitur, I conclude that the garbage heap contained inflammable substances.

7.Article 42 of the Constitution of India mandates that the State shall make provision for securing just and humane conditions of work. The Hon'ble Supreme Court in ***Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161** held that the right to live with human dignity, free from exploitation enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly, clauses (e) and (f) of Article 39 and Articles 41 and 42. This right must include protection of the health and strength of workers. Neither the Central nor any State Government has the right to take any action which will deprive a person of the enjoyment of this right. In ***CERC v. UOI (1995) 3 SCC 42***, it was held that just and humane conditions of work are a part of workers' meaningful right to life. In ***Occupational Health and Safety Association v. UOI (2014) 3 SCC 547***, it was held that right to health ie., right to live in a safe environment is a right flowing from Article 21. It was observed that unfortunately for eking out a livelihood many employees work in dangerous and risky environment. When workers are engaged in hazardous work, there is necessity for constant supervision. In ***Gujarat Mazdoor Sabha v. State of Gujarat (2020) 10 SCC 459***, it was held that the right to life guaranteed to every person under Article 21 includes a worker. He would be deprived of an equal opportunity at social and economic freedom in the absence of just and humane conditions of work. A worker's right to life

cannot be deemed contingent on the mercy of the employer or the State. The International Labour Organisation Declaration on Fundamental Principles and Rights at Work adopted in 1998 provides for the right to a safe and healthy working environment.

8.I have no hesitation to conclude that Kalaiyarasan could not have been put on this job in the first place. He was not meant for this work at all. Any hospital waste will have to be disposed of only as per the Bio-Medical Waste Management Rules, 2016. It contains elaborate provisions for disposal. The authorities have an obligation to adhere to the disposal regime set out therein. They cannot short-circuit the procedure. Even an expired medicine is inherently hazardous. That is why, Rule 4 which catalogues the duties of the occupier mandates that he shall ensure occupational safety of all its healthcare workers and others involved in handling of bio-medical waste by providing appropriate and adequate personal protective equipment. In this case, Kalaiyarasan ought not to have been permitted to douse the garbage with sanitizer liquid and set fire to the same. Schedule II sets out standards for incineration. There is a reference to the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 in the Schedule I of the Bio-Medical Waste Management Rules, 2016. No precautions were taken in this case. I find an egregious breach of the aforesaid rules in this case.

9.Rule 18 of Bio-Medical Waste Management Rules, 2016 states that the occupier or an operator of a common bio-medical waste treatment facility shall be liable for all the damages caused to the environment or the public due to improper handling of bio-medical wastes. This liability rule can be extended in favour of the workers who turn out to be victims. Section 3 of Employee's Compensation Act, 1923 states that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer is liable to pay compensation. Exceptions incorporated in the Section will be attracted if the employee had wilfully conducted himself in the matter of safety. The State has to be a model employer. It cannot be seen compromising the safety of its employees. Kalaiyarasan was tasked to do something which he was not trained or expected to do. It is absurd to suggest that he came to G.H. Manaparai on his own and voluntarily set fire to the garbage heap. He had obviously been provided with a sanitizer liquid. He was instructed to dispose of the garbage by setting fire to it. No warning was given. In fact, such disposal was not contemplated by law. This is a case in which res ipsa loquitur principle applies and I fasten the respondent State with liability.

10.It is well settled that where the State is tortuously liable, compensation can be awarded in exercise of jurisdiction under Article 226 of

the Constitution. In ***Sanjay Gupta v. State of U.P (2022) 7 SCC 203***, it was held that Article 21 has to be read into all public safety statutes and compensation can be awarded in writ proceedings. I need not engage in mathematical calculations by applying formulae to quantify compensation. Recently, a number of people died after consuming illicit liquor. The State of Tamil Nadu announced ex-gratia of Rs.10.00 lakhs to each family. When the family of a person who knowingly consumed spurious liquor and died can be given Rs.10.00 lakhs, certainly, the petitioner, the father of an innocent victim like Kalaiyarasan deserves no less. It is unfortunate that a counter affidavit has been filed opposing the prayer for compensation. I would expect the respondents to straightaway concede in such cases. Of late, I have been invoking the doctrine of benevolent exercise of power in different contexts. I cannot find a more apposite case for invocation of this doctrine.

11.I direct the respondents 1 to 3 to pay a sum of Rs.10,00,000/- towards compensation. The petitioner is aged about 61 years. He has greater claim on the compensation amount. The deceased has left behind two sisters. One of them is married. The unmarried sister will take a sum of Rs.2,50,000/- while the married sister will take Rs.50,000/-. The remaining Rs.7,00,000/- will be deposited in a Fixed Deposit in the name of the petitioner in a nationalized

bank for a period of six years. The petitioner will be entitled to draw the interest once in three months. At the end of the six year period, the petitioner can withdraw the fixed deposit amount.

12.This writ petition is allowed accordingly. No costs.

**28.06.2024**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/skm

**To:-**

1.The Secretary, Health and Family Welfare Department,
Fort St. George, Chennai-600 009.

2.The Director, Directorate of Medical and Rural Health Service,
359, Annasalai, DMS Compound, Teynampet, Chennai-600 006.

3.The District Collector, O/o.The District Collector, Trichy District.

4.The Revenue Divisional Officer, O/o. Revenue Divisional Officer,
Tiruchirappalli, Trichy District.

5.The Superintendent of Police, O/o. the Superintendent of Police,
Trichy-620 020.

6.The Inspector of Police, Manapparai Police Station, Trichy District.

**G.R.SWAMINATHAN, J.**

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**W.P(MD)No.6039 of 2024**

**28.06.2024**