







3. The petitioners filed a complaint before the Human Rights Commission claiming compensation. Based on that, an enquiry was conducted by the District Medical Officer (Health), Pathanamthitta which came out with the following findings:-

*i. There are no available documentary evidence to suggest that Ms. Nova Sabu had any preceding neurological illness.*

*ii. Her symptoms started after she has taken the first dose of Covishield vaccine from Amrita Hospital Ernakulam*

*iii. After verification of the hospital records of Nova Sabu in Pushpagiri Medical college its evident that Ms.Nova Sabu might have suffered from thrombocytopenia, thrombosis syndrome which is an immunogenic response to the covishield vaccine, which is a rare condition which occurs following covidshield vaccination. Studies from UK suggest an incidence of 20.3 per million doses in people aged 18 to 49 yrs.*

Thus it is concluded that as per the available data and evidence Ms.Nova Sabu has died of intra cerebral bleed. This was secondary to immunogenic thrombosis, thrombocytopenia syndrome which is a rare complication of covishield vaccine.

## **POINTS**

1. The death of the petitioners' only daughter namely Nova Sabu is a direct after effect of the administration of the Covishield Vaccine, which is manufactured by the respondents 1 & 2.
2. Vaccination was made compulsory by the government and the deceased had no option but to book the available slot from the vaccination site @ Cowin.gov.in.
3. The Covishield vaccine was administered in the deceased Nova Sabu from the 7<sup>th</sup> respondent Hospital without any communication as to the risk factors of the vaccine.
4. Though the deceased was taken to the 8<sup>th</sup> respondent Hospital on 06/08/2021, she was given only symptomatic treatment. There was no proper diagnosis as to the illness and proper and timely treatment.
4. It is evident from the hospital records that Ms. Nova Sabu might have suffered from thrombocytopenia, thrombosis syndrome which is an immunogenic response to the covishield vaccine.
6. The manufacture of the medicine as well as the Government of India and the State are jointly and severally liable to compensate the petitioners.
7. Whenever fundamental rights are violated or if any person lost his/her life due to act of commission and omission on the part of a public servant, then the High Court can direct the Union & State Governments to pay compensation to the victim or their family members under writ jurisdiction invoking remedy under constitutional torts.

## **LIST OF DATES**

28.07.2021- Petitioners' daughter got vaccinated with Covishield from Amritha Institute of Medical Science (AIMS for short).

07.08.2021 - She was taken to MGM Muthoot Hospital, Kozhenchery.

09.08.2021- She was again taken to MGM Muthoot Hospital.

09.08.2021- She was taken to Pushpagiri Hospital, Thiruvalla.

12.08.2021. Death of petitioners' daughter.

Dated this the 6<sup>th</sup> day March 2022

M R Sudheendran  
Counsel for the Petitioner

**BEFORE THE HONORABLE HIGH COURT OF KERALA**



5. Health & Family Welfare Department, represented by its Secretary, Government of Kerala, Secretariat, Trivandrum-695001

6. Amrita Institute of Medical Sciences (AIMS), Edapally, Cochin-682041 represented by its Managing Director.

7. MGM Muthoot Medical Centre, Kozhenchery PO, Pathanamthitta- 689641 represented by its Managing Director.

8. Pushpagiri Medical College Hospital, Thiruvalla- 689101, represented by its Managing Director.

*(All notices to the Petitioners may be served in the address of – Adv.C Unnikrishnan & M R Sudheendran, Akshaya building, Compara jn, Cochin – 682018 and to the respondents in the address shown above)*

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE  
226 OF THE CONSTITUTION OF INDIA**

1. Petitioners are the biological parents of Miss. Nova Sabu, who died as a result of Covishield vaccination on 12.08.2021. This WP is filed claiming compensation under Constitutional Torts.

2. Petitioners' one and only daughter namely Miss. NOVA SABU aged 19 years, was a student of Integrated MA Literature, 2<sup>nd</sup> year, Amritha School of Arts and Science, Kochi. As the vaccination was made compulsory by the Union and State governments, she was vaccinated with Covishield from Amritha Institute of Medical Science (AIMS for short) on 28.07.2021 on payment of prescribed charges. After vaccination, she was advised to wait for 30 minutes for the purpose of ascertaining whether there is any reaction or allergy with the vaccine. As there was no problem, she was permitted to leave the place with advise to take



Dolo tablet if there is fever or headache. There was no other advices as to the contraindications or serious complications. Therefore she left to her home at Kozhenchery along with the petitioners in Venad Express train. True copy of the certificate of vaccination dated 28.07.2021 is produced herewith and marked as **Exhibit P-1.**

3. On the next day of vaccination, she felt not well. She got headache by 02.08.2021 which continued for two three days thereafter. She took Dolo tablet as advised. On 05.08.2021, she suffered stomach ache. On 06.08.2021, she had head ache. As she become ill and inactive, she was taken to MGM Hospital, Kozhenchery by early morning on Saturday, 07.08.2021. Antigen test was taken there and was found negative. She was given symptomatic treatment for head ache and fever. She was treated in casualty with Dolo IV injection and Emeset 2ml injection and was discharged on the same day.

4. But by the next day (08.08.2021-Sunday) evening, she complained about pain on her eyes. The petitioners consulted an eye specialist of Puthooran's Eye Clinic at Maramon and the doctor told that it may be because of migraine. By late night she had pain in her stomach and tendency for vomiting. Hence she was again taken to MGM Muthoot Hospital by 1.30 am. on 09.08.2021. The fact of vaccination was informed there. She was given symptomatic treatment & sent back home with advise to meet the physician by 10.30 am. It is also informed that the BP of Miss. Nova Sabu was normal. A true copy of the bills issued from MGM Muthoot Hospital is produced herewith and marked as **Exhibit P-2.**

5. As the approach of the doctor and staff of the hospital was unsatisfactory, the complainants took their daughter Nova Sabu to Pushpagiri Medical College Hospital, Thiruvalla with complaints of reduced responsiveness, tiredness, headache history of vomiting. The petitioners informed the doctor the fact that their daughter was vaccinated on 28.07.2021 with Covishield vaccine. During her stay in Pushpagiri Medical College Hospital, she was tested RTPCR negative for Covid infection. There, the doctor namely Dominic Anto, Neuro surgeon, examined her and informed the complainants that there is something happened to the brain of the deceased. While at hospital, She was unconscious and developed generalised convulsion and she was intubated & put in ventilator. CT scan brain showed large intra cerebral hemorrhage involving left parieto occipital, intra parenchymal location with significant mass effect. CT Angiogram revealed no evidence of AV malformation or aneurysm, She had decreased platelet count (10000). No surgery was done in view of poor neurological status and low platelet count. She developed hypotension and was started on inotropic support. She expired at 11.30 AM on 12.08.2021. Post mortem was done at MCH Kottayam (PM MO/240/2021 dt.18.08.2021). The opinion as to cause of death is mentioned as "Deceased died of the intra cranial bleeding - decease of brain". During her stay in Pushpagiri Hospital she was tested RTPCR negative for Covid infection. Her eyes were donated after her death. True copy of the CECT-Cerebral Angiogram report dated 09.08.2021 from Pushpagiri Medical College Hospital is produced herewith and marked as **Exhibit P3**. True copy of the Plain CT-brain report from Pushpagiri Medical College Hospital is

produced herewith and marked as **Exhibit P4**. True copy of the medical report of 12.08.2021 from Pushpagiri Medical College Hospital is produced herewith and marked as **Exhibit P5**. True copy of the Lab Report of 09.08.2021 from Pushpagiri Medical College Hospital is produced herewith and marked as **Exhibit P6**. True copy of the postmortem certificate dated 18.08.2021 from the Directorate of Medical Education, Kerala is produced herewith and marked as **Exhibit P7**.

6. The petitioners filed a complaint before the Human Rights Commission as to the death of their one and only daughter and claiming compensation. Consequently, an enquiry was conducted by the District Medical Officer (Health), Pathanamthitta which revealed inter alia, the following findings :-

- i. There are no available documentary evidence to suggest that Ms. Nova Sabu had any preceding neurological illness.
- ii. Her symptoms started after she has taken the first dose of Covishield vaccine from Amrita Hospital Ernakulam.
- iii. After verification of the hospital records of Nova Sabu in Pushpagiri Medical college it is evident that Ms. Nova Sabu might have suffered from thrombocytopenia, thrombosis syndrome which is an immunogenic response to the Covishield vaccine, which is a rare condition which occurs following Covidshield vaccination. Studies from UK suggest an incidence of 20.3 per million doses in people aged 18 to 49 yrs.

Thus, it is concluded that as per the available data and evidence Ms. Nova Sabu has died of Intra Cerebral Bleed. This was secondary to immunogenic thrombosis, thrombocytopenia

syndrome which is a rare complication of Covishield vaccine. A true copy of the enquiry report sent to the petitioner by the Kerala State Human Rights Commission along with covering letter dated 15.11.2021 is produced herewith and marked as **Exhibit P-8**.

7. An FIR was registered U/s. 174 of the Code of Criminal Procedure as to the death of the victim. A true copy of the FIR No. 859/2021 of Aranmula Police Station is produced herewith and marked as **Exhibit P-9**.

8. It is further stated in Ext. P8 report that regarding matter of awareness of this complication among the medical fraternity and future use of Covishield, this is a subject which should be studied in detail by subject experts and it's beyond the scope of District Health Administration. However, awareness has been given to all the health officials regarding the possibility of a TTS following Covishield vaccination. Instruction have been given to health staff to refer all patients with complaints of Headache Vomiting & any neurological complication to a Physician/Neurologist to rule out the possibility of TTS and initiate treatment at the earliest. Regarding the request for the compensation, it's the decision to be taken by State Government. As per present rule there are no provision for compensation by District Health Administration.

9. It is submitted that the aforesaid finding clearly reveals that the cause of death of the complainant's daughter is immunogenic thrombosis, thrombocytopenia syndrome which is a rare complication of Covishield vaccine. The further observation in the report that regarding matter of awareness of this complication among the medical fraternity and future use of Covishield, this is a subject which should be studied in detail by subject experts and

that awareness has been given to all the health officials regarding the possibility of a TTS following Covishield vaccine clearly reveals that there was no such awareness campaign or detailed study as to the use of Covishield and its after effect earlier. The instruction given to health staff to refer all patients with complaints of headache Vomiting & any neurological complication to a Physician/Neurologist to rule out the possibility of TTS and initiate treatment at the earliest also is only an after effect of the complaint filed by the petitioners.

10. The vaccine Covishield is manufactured by the first respondent Serum Institute of India, which is a rebrand of Oxford Astra Zeneca vaccine. The 2<sup>nd</sup> respondent is a partner of the first respondent firm in the manufacturing of the Covishield vaccine. The respondents 1 & 2 had maliciously and deliberately withheld information regarding the risks and complications associated with the administration of their vaccine. European Governments had halted or limited the use of the vaccine only to people above 60 years old by April 2021 citing the occurrences of blood clots in people administered with it. However, the Serum Institute, which was very much aware of this fatal side effect, did not issue warnings and guidelines to the users and the medical community. It is evident that the company gave priority to their profits over the lives of people. If appropriate warnings and guidelines were issued on time, the life of Ms. Nova Sabu and many other young people like her could have been saved.

11. The Union Government as well as the State Government, especially the Health and Family Welfare Department ought to have studied and understood the after effects of the vaccine and

should have issued warnings and guidelines regarding the fatal element of the vaccine administration. Instead, the Government has only encouraged its use by making it compulsory and also preventing public by issuing general warnings against spreading of any adverse comments/news regarding the use of vaccine. The hospital, Amrita Institute of medical Sciences from where the vaccine was administered after collecting prescribed charges from the petitioners' daughter also has not issued any warning as to its fatal side. They did not take into account reports of adverse side effects of the vaccine and administered it to vulnerable people without providing proper warnings. The only advise from the part of the hospital was to wait there for 30 minutes after vaccination for observation and to take Dolo tablet in case of fever or head ache. As a result they are equally responsible for the death of Nova Sabu. Thus there is serious lapses and inaction on the part of the respondents in communicating the possible after effects of the vaccine administration and as a result of which the petitioners had to compromise the life of their only daughter.

12. The deceased Nova Sabu has not received proper treatment from the hospitals, respondents 8 & 9 and there was no proper diagnosis as to the illness of the deceased or its cause. These are all also consequential due to the ignorance of its complications and the risk effects of the Covishield vaccine and as to the follow up actions and treatment required. But those ignorance cannot be an excuse for not diagnosing the real illness or nature of the illness and in administering proper and timely treatment which ultimately resulted in the loss of the one and only daughter of the petitioners.

13. It is submitted that vaccination was made compulsory on payment of charges and the deceased had to opt for the available vaccine of Covishield at the time of booking her slot for vaccination. In the above circumstances, the manufacturer of the medicine as well as the Government of India and the State are jointly and severally liable to compensate the petitioners, who are the mother and father of the deceased. Further, inspite of hospitalization, there was no proper and timely detection of the actual illness of the deceased and thus she was denied proper and timely treatment, which resulted in her death. As such the hospital authorities are also liable to compensate the petitioners.

14. Various Governmental authorities has also assured that the corona vaccines are completely safe and having no risk and threat to human body. In the interview given to NDTV on 4th January, 2021 by Dr. V.G. Somani, Drug Controller General of India, it is categorically mentioned that, the vaccines are 110% safe. He said that "We'll never approve anything if there is slightest of safety concern. The vaccines are 110 per cent safe". In March 2021, around 18 European countries banned Astra Zeneca (Covishield) vaccine due to death caused because of side effects of blood clotting due to vaccination. The WHO on 26 July, 2021 also warned people about GBS caused due to Covishield. The WHO has also warned the people getting Covishield (Astra Zeneca) vaccines to be careful as it is causing a serious paralytic disease GBS (Guillain Barre Syndrome). True copy of the report issued on 14.04.2021 showing that Denmark terminates use of AstraZeneca vaccine is produced herewith and marked as **Exhibit P10**. True copy of the report published on 02.12.2021 as to the side effects

of Astra Zeneca (Covishield) vaccine downloaded from internet is produced herewith and marked as **Exhibit P11**.

15. The Petitioners lost their only daughter who was aged 19 years and was studying for Integrated MA 2<sup>nd</sup> year. She was a brilliant student secured more than 80% marks in the 10<sup>th</sup> Class under ICSE and in 12<sup>th</sup> under ISE. The loss caused to the petitioners can neither be explained in words nor can be compensated in terms of money. Even then, the petitioners are entitled for adequate compensation. But the first respondent has by E-mail dated 30.09.2021 has sent a message conveying their heartfelt condolences for the loss and issued a form that submitted the details for assessment of the case. Accordingly, the Petitioners submitted the form with the then available details on 06.10.2021. True copy of the E mail dated 30.09.2021 issued by the first respondent is produced herewith and marked as **Exhibit P12**. A true copy of the details furnished by the petitioners is produced herewith and marked as **Exhibit P13**.

Petitioners have no other alternative and efficacious remedy than to invoke the jurisdiction under Article 226 of the Constitution of India under Constitutional Torts on the following among other grounds.

### **GROUND**

A. The death of the petitioners' only daughter namely Ms. Nova Sabu is a direct after effect of the administration of the Covishield Vaccine, which is manufactured by the respondents 1 & 2 and made compulsory by the respondents 2 to 5 on payment of



charges. Therefore they are liable for payment of compensation to the petitioners for the loss of life of their one and only daughter.

B. The Covishield vaccine was administered in the deceased Ms. Nova Sabu from the 7<sup>th</sup> respondent Hospital without any communication as to the risk factors of the vaccine. After vaccination, she was advised to wait for 30 minutes for the purpose of ascertaining whether there is any reaction or allergy with the vaccine and then she was permitted to leave with advice to take Dolo tablets if there is fever or Headache. They did not take into account reports of adverse side effects of the vaccine and administered it to vulnerable people without providing sufficient information and proper warnings.

C. Though the deceased was taken to the 8<sup>th</sup> respondent Hospital on 06.08.2021, she was given only symptomatic treatment for Headache and Fever. Thus, she was treated in casualty with Dolo IV injection and Emeset 2ml injection and was discharged on the same day. Though the deceased was taken to the MGM Hospital on 09.08.2021 and fact of vaccination was also already informed, She was given symptomatic treatment & sent home with advice to meet the physician by 10.30 am. This shows that there was no proper diagnosis as to the illness and proper and timely treatment.

D. Though the deceased was taken to the 9<sup>th</sup> respondent Pushpagiri Medical College Hospital, with complaints of reduced responsiveness, tiredness, headache history of vomiting and the fact of vaccination was informed, she could not be provided with proper treatment and there was no proper diagnosis as to the

illness. As such the attempts made by the hospital went futile and she died there.

E. The enquiry conducted by the District Medical Officer (Health), Pathanamthitta reveals that there are no evidences to suggest that Ms. Nova Sabu had any preceding neurological illness and her symptoms started after she has taken the first dose of Covishield vaccine. That it is evident from the hospital records that Ms. Nova Sabu might have suffered from thrombocytopenia, thrombosis syndrome which is an immunogenic response to the Covishield vaccine, which is a rare condition which occurs following Covidshield vaccination. Studies from UK suggest an incidence of 20.3 per million doses in people aged 18 to 49 yrs. Thus it is concluded that Ms.Nova Sabu has died of Intra Cerebral Bleed, which was secondary to Immunogenic Thrombosis, Thrombocytopenia Syndrome which is a rare complication of Covishield vaccine.

F. The respondents 1 & 2 who were very much aware of the fatal side effect of the Covishield vaccine, had maliciously and deliberately withheld information regarding the risks associated with the administration of the vaccine. They only gave priority to their profits over the lives of people. If appropriate warnings and guidelines were issued on time, the life of Ms. Nova Sabu and many other young people like her would have been saved.

G. The Union Government as well as the State Government, especially the Health and Family Welfare Department ought to have studied and understood the after effects of the vaccine and should have issued warnings and guidelines regarding the fatal element of the vaccine administration. Instead, the Government

has only encouraged its use by making it compulsory on payment and also preventing public by issuing general warnings against spreading of any adverse comments/news regarding the use of vaccine.

H. It is submitted that vaccination was made compulsory and the deceased had no other option but to book the available slot from the vaccination site @ Cowin.gov.in. There was no warning as to the risk factors provided in the site also or with the booking confirmation message. In the above circumstances, the manufacture of the medicine as well as the Governments of Union and the State are jointly and severally liable to compensate the petitioners, who are the mother and father of the deceased. Along with them, the 7<sup>th</sup> respondent hospital, where the vaccine was administered without proper advice and the respondent 8 & 9 hospitals which failed to properly diagnose the illness and provide proper and timely treatment are also liable for payment of compensation to the petitioners.

I. The 4<sup>th</sup> respondent, the Drug Controller General of India, has in the interview given to NDTV on 4th January, 2021 has categorically stated that, the vaccines are 110% safe. He said that "We'll never approve anything if there is slightest of safety concern. The vaccines are 110 per cent safe". This had lead to the petitioners to believe that the vaccination is fully safe.

J. It is settled legal position that whenever fundamental rights of any persons are violated or if any person lost his/her life due to act of commission and omission on the part of a public servant, then the Constitutional Courts can direct the responsible Governments to pay compensation to the victim or their family

members under Constitutional Tort invoking writ jurisdiction and the State can recover the said amount from erring public servant later as held in Nambi Narayan Vs. Siby Mathews (2018) 10 SCC 804, Veena Sippy Vs. Naravan Dumbre 2012 SCC OnLine Bom 139. Chairman Railway Board Vs. Mrs. Chandrima Das (2000) 2 SCC 465. Nina Rajan Pillai Vs. Union of India 2011 (5) AD (Del) 36.

K. The Honorable Supreme Court in D.K. Basu Vs. State of West Bengal (AIR 1997 SC 610) has held as follows:

*“55. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation. the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State in law, is duly bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of*

*the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."*

L. In the facts and circumstances of the case, it can be found that the petitioner's daughter was given vaccine under deception, without proper information and by suppression of relevant and material facts about the risk involved and false narratives by the State/ Central/ Hospital/ Pharmaceutical authorities that the vaccines are completely safe. However, the petitioners' daughter suffered serious side effects, there was no treatment available and she died due to side effects of vaccine as has been confirmed. Hence the aforesaid authorities are jointly and severally liable and responsible for causing her death by spreading false narratives, suppression of material facts and are bound to compensate the petitioners.

M. The Constitution Bench of Hon'ble Supreme Court in Anita Khushwha's case (2016) 8 SCC 509, has held that the value of life of Indian citizen is not less than that of any person across the world either of America or of any country and therefore the Petitioner is entitled to the compensation in proportion to the compensation

granted in other similar cases in United State, Singapore etc. Hence the petitioner is entitled for adequate and interim compensation as a deterrence to guilty and as succour to the petitioner's family for loss of life of petitioner's only daughter due to deliberate act of commission and omission on the part of respondents, with a liberty to the state authorities to recover it from the responsible officials and Serum Institute, Pune who is the manufacturer of Covishield Vaccine, as per law & ratio laid down in Veena Sippy Vs. Mr. Narayan Dumbre & Ors. 2012 SCC OnLine Bom 319.

N. There is violation of Regulation no. 6.1 of the Code of Ethics Regulations, 2002, which is as follows:

*6.1 Advertising:*

*6.1.1 Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organisations is unethical. A physician shall not make use of him / her (or his / her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialities, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self-aggrandizement. A physician shall not give to any person, whether for compensation or otherwise, any approval, recommendation, endorsement, certificate, report or statement with respect of any drug, medicine, nostrum remedy, surgical, or therapeutic article, apparatus or appliance or any commercial product or article with respect of any property, quality or use thereof*

*or any test, demonstration or trial thereof, for use in connection with his name, signature, or photograph in any form or manner of advertising through any mode nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode. A medical practitioner is however permitted to make a formal announcement in press regarding the following:*

- (1) On starting practice.*
- (2) On change of type of practice.*
- (3) On changing address.*
- (4) On temporary absence from duty.*
- (5) On resumption of another practice.*
- (6) On succeeding to another practice.*
- (7) Public declaration of charges.*

The above Regulation of the Medical Council of India is violated in the process of compulsory administration of the Covishield vaccine and the same also amounts to and constitute deficiency in service.

O. The questions whether compensation under writ jurisdiction can be awarded and whether State Government is liable for negligent act of their official has come up for consideration in in which the Honourable SC has answered the same in affirmative after considering various decisions and held that it is therefore, settled law that the court in exercise of extraordinary power under Art.226 of the *Constitution of India* can award damages against public authorities. The courts, however, award damages only if it can be established that there was direct negligence on the part of

the public authority and that was a proximate cause for the injury or death of the victim and not in every case like if there was a minor infraction of public duty.

P. The courts have rejected the contentions that the petitioner should have approached the civil court for damages and the matter should not have been considered in the petition under Art.226 of the *Constitution*. [*Chairman, Railway Board v. Chandrima Das*, (2000) 2 SCC 465].

Q. The principle of *res ipsa loquitur* explained in a medical negligence case can be found in *V. Kishan Rao v. Nikhil Super Speciality Hospital*, 2011 ACJ 500 (SC), where paras 45 and 46 read as under:

*"(45) In the Treatise on Medical Negligence by Michael Jones, the learned author has explained the principle of res ipsa loquitur as essentially an evidential principle and the learned author opined that the said principle is intended to assist a claimant who, for no fault of his own, is unable to adduce evidence as to how the accident occurred. The principle has been explained in the case of Scott v. London & St. Katherine Docks Co., (1865) 3 H&C 596, by Chief Justice Erle in the following manner:*

*'...where the thing is shewn 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.'*

*(46) The learned author at page 314, para 3-146 of the book gave illustrations where the principles of res ipsa loquitur have been*



*made applicable in the case of medical negligence. All the illustrations which were given by the learned author were based on decided cases. Few illustrations are set out includes failure to diagnose a known complication of surgery [See Rietz v. Bruser (No. 2), (1979) 1 WWR 31, Man QB]; Delay in obtaining expert obstetric assistance [See Bull v. Devon Area Health Authority (1989), (1993) 4 Med LR 117 at 131]; Where following an operation under general anaesthetic, a patient in the recovery ward sustained brain damage [See Coyne v. Wigan Health Authority, (1991) 2 Med LR 301, QBD]; Where following a routine appendectomy under general anaesthetic, an otherwise fit and healthy girl suffered a fit and went into a permanent coma [See Lindsey v. Mid - Western Health Board, (1993) 2 IR 147 at 181]; Where a spinal anaesthetic became contaminated with disinfectant as a result of the manner in which it was stored causing paralysis to the patient [See Roe v. Minister of Health, (1954) 2 QB 66. See also Brown v. Merton, Sutton and Wandsworth Area Health Authority, (1982) 1 All ER 650];*

R. IN *Nilabati Behera v. State of Orissa*, 1993 ACJ 787 (SC), the Apex Court also held that the concept of sovereign immunity is not applicable to cases of violation of fundamental rights.

S. In *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, 2012 ACJ 48 (SC), the Apex Court has held that right to life guaranteed under Art.21 of the *Constitution of India* is the most sacred right preserved and protected under the *Constitution*, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right.

T. The Apex Court in *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549, observed that the right guaranteed under Art.21 of the *Constitution of India* cannot be exercised without the basic human rights including the right to medical care.

U. There is no immunity to Vaccine Manufacturing Companies of India and it is so submitted by the Union of India in its affidavit dated 28.11.2021 submitted before the Hon'ble Supreme Court in the case of *Jacob Puliyel Vs. Union of India in Writ Petition (Civil) No. 607 of 2021*.

V. Constitution Bench of Hon'ble Supreme Court in the case of *Anita Kushwaha Vs. Pushap Sadan (2016) 8 SCC 509*, has ruled that the life of Indian Citizen is not less pricy than the life of people in England or anywhere. But in India the rights are more precious. It is ruled that:

*"18... Boxe, J. emphasised the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said: (Prabhakar Kesheo case [Prabhakar Kesheo Tare v. Emperor. AIR 1943 Nag 26 1942 SCC OnLine MP 78]. SCC OnLine MP para 1) "The right is prized in India no less highly than in England, or indeed any other part of the Empire, perhaps even more highly here than elsewhere: and it is zealously guarded by the courts."*

W. The Petitioners lost their only daughter who was aged 19 years and was studying for Integrate MA II year. She was a brilliant student secured more than 80% marks in the 10<sup>th</sup> Class under ICSE and in 12<sup>th</sup> under ISE. The loss caused to the petitioners can neither be explained in words nor can be compensated in terms of

money. Only some sort of succor can be done by awarding compensation.

### **RELIEF**

- (i) Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents to pay a sum of Rs. 10,00,00,000 (Ten Crores) as compensation to the petitioners for the death of their only daughter Ms. Nova Sabu, aged 19 years.
- (ii) Declare that the petitioners' daughter Ms. Nova Sabu, aged 19 years died consequent to the complications of Covishield Vaccination and the respondents are responsible and liable to compensate the petitioners.
- (iii) Grant such other reliefs as this Honourable Court may deem fit to grant in the facts and circumstances of the case.
- (iv) Grant the cost of this writ petition.

Dated this the 6<sup>th</sup> day of April 2022

Petitioners No: 1 Mrs. Jean George

No:2 Mr. Sabu C. Thomas

M.R. Sudheendran  
Counsel for the Petitioners

### **INTERIM RELIEF**

Direct the respondents to pay a sum of Rs. 1,00,00,000/- (One Crore) as ad-interim compensation to the petitioners for the death



I, JEAN GEORGE, W/o. Sabu C Thomas, aged 47 years,  
CHITTANICKAL HOUSE, KATTOOR PO, PATHANAMTHITTA,  
PIN 689650 do hereby solemnly affirm and state as follows:-

I am the first Petitioner in the above W.P. I am conversant with the facts of the case. I swear this affidavit for and on behalf of the 2<sup>nd</sup> petitioner also as I am authorized to do so. I have not filed any other Petition for similar reliefs. The facts stated in the Writ Petition are true to my personal knowledge and belief. The documents produced as Exhibits are true copies of the Original.

All what is stated above paragraphs are true to my personal knowledge and belief.

Dated this the 3<sup>rd</sup> April 2022

Deponent

Solemnly affirmed and signed by the deponent who is personally known me on this the 3<sup>rd</sup> April 2022 at my office at Ernakulam

M R Sudheendran  
Advocate