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IN THE HIGH COURT OF DELHI

Judgment reserved on : September 10, 2008

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Judgment delivered on : October 1, 2008

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RFA 547/2007

GOVT. OF NCT OF DELHI & ORS.

..... Appellants

Through: Mrs.Avnish Ahlawat, with Ms.Latika
Chaudhary, Advocates

VERSUS

SUDHA DEVI & ANR.

..... Respondents

Through: Mr.M.L. Sharma, Advocate

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog
Hon'ble Mr.Justice J.R. Midha

1. Whether reporters of local papers may be allowed
to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

: PRADEEP NANDRAJOG, J.

1. Sudha Devi was admitted to the 'Maternity Ward' of G.T.B. Hospital, Shahdara on 7.7.2003 as an expectant mother. A caesarian section had to be performed. A male child was born to her the same day at 2.30 p.m. Needless to state because of the surgery, Sudha Devi was administered pain killers, sedatives and antibiotics which obviously affected

her mental alertness. Being a Female Ward, no male members were allowed to stay in the ward. She had no female relatives to look after her and a lady in the neighbourhood, Indu volunteered to give her company in the hospital.

2. At around 4:30 AM on 8.7.2003 the infant was found missing. Obviously the infant had been kidnapped. A FIR under Section 363 IPC, being FIR No.157/2003 was registered with the local police at P.S. Dilshad Garden. The infant could not be found.

3. Sudha Devi sued the hospital authorities as also the Government of NCT Delhi which had established the hospital for damages. She impleaded the Commissioner of Police Delhi as also the Union of India as parties. She claimed Rs.5 lacs as compensation.

4. She succeeded. Vide impugned judgment and decree dated 24.7.2007, holding defendants No.1, 2 & 3, guilty of negligence the suit stands decreed. The Commissioner of Police has been let off on the finding returned that police personnel were posted around the hospital to maintain general law and order and were not charged with the obligation to ensure that only authorized persons enter and exit the hospital. Indeed, the police personnel would have no means to decide or determine as to

who should enter the hospital or who should exit the same.

5. The learned Trial Judge has believed the testimony of Sudha Devi who appeared as PW-1 and Indu who appeared as PW-3.

6. In her testimony Indu deposed that her young son was with her at the hospital and at about 4.30 a.m. on the fateful day she had to take him to the toilet. When she returned from the toilet she found that the male child born to Sudha Devi was missing. She stated that the Doctors were informed of the same and a complaint was lodged with the police. She stated that a search was made for the missing infant child but he could not be found.

7. The defence examined Dr. N.K. Sinha, the Additional Medical Superintendent of the hospital as D2/W1. The SHO, P.S. Dilshad Garden was examined as D4/W1.

8. Dr. N.K. Sinha who was not posted at the hospital when the incident took place, being posted at the hospital since November 2005, corroborated Sudha Devi that a male child was born to her after a caesarian section at 2.30 p.m. on 7.7.2003 and she was shifted from the Labour Ward to the General Ward in the evening of 7.7.2003. He stated that the new born child was handed over to the attendant accompanying the patient. He deposed that :-

"The female ward is taken care by the

professor of Gynae Department. There are security persons deployed in each ward who checked the entry and exit of the patient and their attendant. There is no register maintained as to who has come in Ward No.13 and gone out. It is wrong to suggest that any person can enter in any ward only the authorized persons are permitted to enter by the security staff."

9. D4/W1, SHO of P.S. Dilshad Garden deposed about the registration of the FIR. He stated that he could not furnish the names of the police officers who were deployed at G.T.B. Hospital when the incident took place.

10. Learned Trial Judge has held that it was the duty of the hospital to ensure that the patients admitted at the hospital are not visited with any harm. Emphasis has been laid by the learned Trial Judge on extra care required to be taken at the Maternity Ward where the young mothers, after delivery, would presumably be not in their full senses and especially those mothers who have undergone caesarian sections. Due to effects of anesthesia and sedatives, the learned Trial Judge has held, that such mothers would presumably be drowsy.

11. Damages in sum of Rs.5 lacs have been awarded to Sudha Devi. The suit has been dismissed against the Commissioner of Police. The hospital, the Government of NCT Delhi and the Union of India have been made jointly and

severally liable to satisfy the decree.

12. Ms.Avnish Ahlawat, learned counsel for the appellants urged that merely because security is deployed at the hospital by the hospital authorities does not mean that the patients and their attendants are absolved of the duty to take care of themselves or their children and wards. Learned counsel urged that the hospital being run by the Government of NCT Delhi does not charge any money and hence would not be responsible for the safety of the patients admitted at the hospital. Learned counsel urged that admittedly Sudha Devi was accompanied by Indu who was the attendant and thus, it was the duty of Indu to take care of the infant. Lastly, learned counsel urged that the compensation in sum of Rs.5 lacs is excessive.

13. The jurisprudential concept of negligence defies any precise definition. We do not intend to catalogue the various definitions of negligence but would note that each definition recognizes two essential components of negligence, that is to say:-

- (i) The existence of a duty to take reasonable care which is owed by the alleged tortfeasor to the person aggrieved;
- (ii) The failure to attend the duty of reasonable care.

14. On proof of the twin, the resultant damages which

are the direct and inevitable (i.e. reasonably foreseeable) consequences of negligence have to be borne by the tortfeasor qua the injured person.

15. What amounts to negligence depends on the facts of each case. It may consist in omitting to do something which ought to be done or not doing something which ought to be done, either in a different manner or not at all. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause injury to a person or property.

16. The degree of care required to be taken depends on the surrounding circumstances of each case and varies proportionately with the risk to be encountered and the magnitude of the prospective injury. Further, a person may reasonably be expected to take extra care on account of better knowledge of the facts.

17. No doubt, a person is in general, entitled to assume that others will comply with statutory regulations but not that they will take reasonable care to look out for themselves or will take reasonable steps to avoid common risks when experience shows negligence to be common. This was held in the decisions reported as **1947 (2) All ER 350** *Admiralty Commissioners Vs. North of Scotland and Orkney and Shetland Steam Navigation Co., Ltd.* and **1949 (1) All ER**

60 London Passenger Transport Board Vs. Upson and Anr.

The latter decision applied the principle in relation to drivers of vehicles being aware of the fact that at controlled crossings pedestrians had the tendency to cross over even when the signal for the pedestrians is red in colour. It was held that in view of this fact of pedestrians being negligent being known to the drivers a extra duty to be vigilant at controlled crossings was required to be maintained by the drivers keeping in knowledge negligent pedestrians.

18. A higher degree of care is required of those who know of or ought to foresee the presence of the disabled; the immature; the feeble minded or persons with a feeble body. Similarly, the duty of care owed to a child will be more strict so as to take account of the likelihood of the child being endangered by the act of the tortfeasor.

19. Merely because the defendants is exercising a common calling akin to a charitable cause does not exclude the duty of reasonable care to be observed, as was held in the decision reported as **(1936) 1 All ER 557** Shiffman Vs. The Grand Priory in the British Realm of the Venerable Order of the Hospital of St. John of Jerusalem.

20. Referring to the facts of the instant case, the fact that an untoward incident may happen at the maternity ward and it being anticipated stands proved by the testimony of

D2/W1, Dr. N.K. Sinha, the Additional Medical Superintendent of the hospital who stated that security persons are deployed in each ward to regulate and check the entry and exit of the patients and their attendants. The denial in cross-examination to the suggestion that people had unrestricted entry in the ward, evidences that those in charge of the hospital were aware that entry of unauthorized persons has to be prevented inside the hospital. The hospital authorities have thus accepted that they owed a duty of care to the patients and the newly born at the Maternity Ward, to protect their person and their belongings, having regard to the condition which were reasonably anticipated i.e. entry of unauthorized persons in the wards. Thus it was necessary, indeed it was the duty of the hospital authorities, to take effective measures to secure that the ward was watched and protected from unauthorized persons, prohibiting their entry within the precincts of the Maternity Ward.

21. We need to speak no further nor do we need to elaborate with reference to any further fact.

22. That the infant child was kidnapped from the hospital is an admitted fact. That Sudha Devi had undergone a caesarian section at around 2.30 p.m. on 7.7.2003 is an admitted fact. That the infant was found missing at around 4.30 a.m. the next day i.e. 8.7.2003 is also an admitted fact.

23. We concur with the view taken by the learned Trial Judge that Sudha Devi was entitled to recover damages from the hospital authorities and the Government of NCT Delhi which had established the hospital.

24. But we do not understand as to how Union of India would be responsible for what had happened, inasmuch as the hospital was neither established nor maintained by the Union of India.

25. On the issue of quantum of damages we may note that in cases of infants and minors, conventional damages are awarded inasmuch as there is no evidence before the Court as to what would be the future career of the child. It is not known as to how the child would flower in life. We are guided by the decision of the Hon'ble Supreme Court reported as AIR 2001 SC 3660 Ms.Garewal & Anr. Vs. Deep Chand Sood & Ors. Young school students had drowned while on a picnic due to the negligence of the school authorities. The incident took place on 28.5.1995. The unfortunate children were students of class IVth, Vth and VIth. Compensation awarded to the parents who lost their children was Rs.5 lacs.

26. The pain and suffering of the parents whose child is dead would be less than the pain and suffering of parents whose child is lost and is not found. The reason is that the human mind finds solace in a death by believing that the body

is free from the troubles of life and the soul has found a comfortable abode in some other form. But where a child is lost, but is in the world of living, the trauma of the well-being of the child is suffered by the parents each year of their life. Every joyous occasion; every festival and every holiday brings back the memory of the missing child and the thought is bound to float in the mind of the parents: *is our child happy. Is he well fed. Where is he. Hopefully he is not a bonded labour somewhere. Hopefully a gang of beggars has not maimed our child and put him on the streets to beg.* These floating thoughts make painful the memory of the lost child and is a continuous trauma for the parents for all their life.

27. Recompense for mental pain and suffering is an essential attribute of a non-pecuniary loss to be recompensed.

28. Additionally taking note of the fact that the learned Trial Judge has not granted any interest to Sudha Devi we hold that no case is made out to interfere with the quantum of damages awarded.

29. We find no merit in the appeal insofar as the hospital and the Government of NCT Delhi have challenged the impugned judgment and decree. We accept the appeal in favour of the Union of India.

30. The appeal is allowed qua Union of India. The impugned judgment and decree dated 24.7.2007 is set aside

qua Union of India and the suit filed against Union of India is dismissed. We affirm the impugned judgment and decree against G.T.B. Hospital and the Govt. of NCT Delhi.

31. The Government of NCT Delhi and G.T.B. Hospital are held jointly and severally liable to pay Rs.5 lacs to the plaintiff. They shall additionally pay the costs in the appeal to the respondent No.1.

32. Since the appeal is dismissed, the money deposited by the appellants pursuant to the order dated 22.10.2007 be released to the respondent No.1 together with interest which has accrued thereon.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

October 1, 2008
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