

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30 January, 2012

+ LPA 72/2012

% THE LAL BAHADUR SHASTRI HOSPITAL Appellant

Through: Mr. Aditya Madan, Adv.

Versus

SMT. DAYA & ANR.

..... Respondents

Through: None.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court Appeal challenges the judgment dated 29th November, 2011 of a Learned Single Judge of this Court allowing W.P.(C) No.15854/2006 preferred by the respondents and directing the appellant Hospital to pay a sum of ₹2 lac by way of compensation to the respondents/writ petitioners.

2. The writ petition was filed claiming total compensation of ₹9 lacs. It was the case of the respondents/writ petitioners (with the respondent no.1 being the wife of the respondent no.2) that the respondent no.1 had undergone sterilization operation on 13th March, 2003 at the appellant Hospital and the respondents were assured that they no longer required any family planning method; however the respondent no.1 had still conceived and gave birth to a female child on 23rd January, 2005. Compensation of ₹6 lac was sought for upbringing of an unwanted child born due to the sheer

negligence of the appellant Hospital and a further deposit of ₹3 lac in the name of the child was sought for the purposes of her marriage. Paras 6 to 8 of the writ petition are of relevance for the purposes of the present controversy and are as such reproduced herein below as under:-

- “6. That the petitioners are very poor and comes from the downtrodden strata of the society. The petitioner no.2 is a daily wager and earns meager amount of ₹ 2,800/- to 3,000/- per month and somehow both the petitioners manage their family together.
7. That however, some months after her sterilization operation the petitioner noted some irregularities in her menstruation cycle and accordingly, she approached in the 1st week of the month of August, 2004 to the respondent no.2 along with documents of sterilization. However, on disclosing her doubts to the OPD staff of respondent no.2, she was not attended by the OPD staff on duty after checking her certificates of sterilization and she was assured that there were no chances of pregnancy and she was advised to go back and not to worry. The petitioner no.1 having no option and being uneducated and poor came back to her home.
8. That however in order to clear her doubts the petitioners on 17.09.2004, again approached to Lady Hardinge Medical College and Smt. Sucheta Kriplani Hospital, New Delhi and got clinical examination of the petitioner no.1 which confirmed her pregnancy. The copy of clinical examination is annexed herewith as Annexure P-2.”

3. The appellant Hospital contested the writ petition and filed a counter affidavit stating that the tubectomy operation undergone by the respondent no.1 has a failure rate of 0.71% in the best of set up and as such no

assurance as claimed was meted out to the respondents. It was also pleaded that though no other method of contraception is advised after tubectomy operation but the persons undergoing the said procedure are advised and cautioned of the failure rate and asked to report in case of missed menstrual period. It was pleaded that the respondents were similarly advised. In response to paras 6 to 8 (supra) of the petition it was pleaded in the counter affidavit as under:-

“6. Paras 6 need no reply being matter of record.

7. In reply to para 7 it is a standard practice to advise the patients at the time of discharge after the sterilization operation to report immediately to the Hospital in case of missing menstruation beyond two weeks. It is pertinent to mention here that, had the petitioner followed the advice given to her at the time of discharge, the present situation could easily be avoided by performing MTP without undue risk to the petitioner. It is further submitted that the petitioner reported to this Hospital very late in the month of August 2004, which clearly shows that the petitioner was not serious about the matter and allowed the situation to get out of control deliberately. It is denied that the petitioner was not attended by the OPDS Staff of the Hospital.

8. The content of para 8 are matter of record. Moreover it is submitted that the petitioner has not disclosed at Lady Hardinge Medical College ANC that she had already undergone sterilization operation and is not interested in bearing this child when could have easily gone MTP, as she was less than twenty weeks gestation as on 17.09.2004.”

4. The Learned Single Judge, on reliance by the appellant upon *State of Punjab v. Shiv Ram* AIR 2005 SC 3280 agreed with the contention of the

appellant that compensation for failure of a sterilization operation could be awarded only in a Suit upon it being established that the failure was attributable to negligence of the doctor. However it was held that the respondents having approached the appellant Hospital in August, 2004 when the pregnancy was less than 20 weeks old and could be legally terminated under the Medical Termination of Pregnancy Act, 1971, the appellant Hospital neglected in not attending to the respondent no.1 and terminating her pregnancy and which resulted in the unwanted child. For such negligence, compensation of ₹2 lacs as aforesaid was awarded. It was also held that in September, 2004 when the respondents approached the Lady Hardinge Medical College, the pregnancy by then being of more than 20 weeks, could not have been terminated.

5. The counsel for the appellant Hospital before us has contended that the respondents have not placed any documents on record to show that they had so approached the appellant Hospital in August, 2004 and thus no negligence could have been attributed to the appellant Hospital. With respect to the admissions aforesaid of the visit in August, 2004, in para 7 of the counter affidavit, relied upon by the Learned Single Judge also it is contended that the same is not an admission of the visit by the respondents in August, 2004 and is a statement on demurrer.

6. We may notice that the appellant Hospital not only in para 7 of the counter affidavit but also in para 13 of the counter affidavit stated as under:-

“13. (Wrongly numbered as 14) in reply to para 13 it is

submitted that the birth of unwanted girl child was due to the sheer negligence on the part of the petitioner. It is a standard practice to advise the patients at the time of discharge after the sterilization operation to report immediately to the Hospital in case of missing menstruation beyond two weeks. It is pertinent to mention here that, had the petitioner following the advice given to her at the time of discharge, the present situation could easily be avoided by performing MTP without undue risk to the petitioner. It is further submitted that the petitioner reported to this Hospital very late in the month of August 2004, which clearly shows that the petitioner was not serious about the matter and allowed the situation to get out of control deliberately. It is further submitted that there is no negligence on the part of the answering respondent no.2/Doctors who had performed the sterilization operation on 13.03.2003. It is submitted that the tubectomy operation was carried out with utmost care but it was one of the case which falls under the failure rate in sterilization.”

7. We are unable to agree with the contention of the appellant Hospital. There is indeed an unequivocal admission of the respondents having visited the appellant Hospital in August, 2004. The appellant Hospital has not referred to the visit of August, 2004 on demurrer. Rather, when the respondents in the writ petition pleaded that they had visited the appellant Hospital in first week of August, 2004 and were not attended to, the appellant Hospital in the counter affidavit pleaded that the visit was “very late in the month of August 2004” and denied that the respondents were not attended to. Rather it is the appellant Hospital which is now attempting to wriggle out of the admissions made. The appellant Hospital having made an unequivocal admission of the visit of August 2004 cannot now be permitted to wriggle out of the same. Once the visit of August 2004 is admitted, the

negligence of the appellant Hospital is writ large and no perversity or unreasonableness is found in the relief of compensation of ₹2 lac granted by the Learned Single Judge.

8. We therefore do not find any merit in this appeal; the same is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JANUARY 30, 2012

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