

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

Date of decision: 11th October, 2012

+ **LPA No. 240/2004**

% **GOVT. OF NCT OF DELHI & ORS** **....Appellants**
Through: Mr. V.K. Tandon, Adv.

Versus

SHOBHA **..... Respondent**
Through: None.

CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 25th April, 2003 of the learned Single Judge of this Court allowing CWP No. 7715/2001 preferred by the respondent by directing the appellants to pay total compensation of Rs.3,25,000/- to the respondent for a failed tubectomy operation.

2. Notice of the appeal was issued and the appeal admitted for hearing on 1st November, 2006. Though the appeal was accompanied with an

application for stay of operation of the impugned judgment but no stay was granted. Subsequently on 5th March, 2010, the counsel for the appellants stated that the amount of compensation will be deposited in the Registry and pursuant thereto a sum of Rs.3,30,000/- was deposited and on 15th March, 2010 directed to be kept in a fixed deposit. The appeal was dismissed for non appearance of either parties on 10th November, 2009; an application for restoration was filed which was allowed on 21st May, 2010 in the presence of the counsel for the respondent. Today when the matter is called, none appears for the respondent. Considering that the appeal is of the year 2004, it is not deemed expedient to await the respondent any further and the counsel for the appellants has been heard.

3. The counsel for the appellants has contended that the matter is no longer *res integra*. Reliance in this regard is placed on ***State of Punjab Vs. Shiv Ram*** (2005) 7 SCC 1 where a three Judges Bench of the Supreme Court held that merely because a woman having undergone sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. It was further held that the claim in tort can be sustained only if there is negligence on the part of the surgeon in

performing the surgery and the proof of negligence has to satisfy Bolam's test. It was yet further held that no liability on this account can be fastened unless it is pleaded and proved that assured 100% exclusion of pregnancy after surgery, was the basis for undergoing surgery. The Supreme Court also noticed that the methods of sterilization so far known to medical science which are most popular and prevalent, are not 100% safe and secure and once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. The said judgment, the counsel for the appellants contends, was also followed in *State of Haryana Vs. Raj Rani* (2005) 7 SCC 22.

4. The counsel for the appellants has also taken us through the record including the consent form signed by the respondent and her husband in vernacular before undergoing the surgery and in which they had admitted having been informed of the probability of failure of the operation and had further undertaken not to blame the hospital/operating surgeon in any circumstance.

5. It is also contended on the basis of records that the respondent in spite of missing the menstrual cycle did not approach the hospital in time as had been advised and approached much later, by when termination of pregnancy

was not feasible. It is yet further contended that all these are disputed questions of fact which in any case could not have been adjudicated in writ jurisdiction.

6. The counsel for the appellants however fairly states that notwithstanding the law aforesaid having been laid down by the Supreme Court, the Supreme Court had nevertheless allowed the respondents in those cases to retain the compensation of Rs.50,000/- awarded to them in those cases and which had already been paid to them.

7. In the light of the judgments aforesaid of the Supreme Court, we are satisfied that the judgment of the learned Single Judge which of course is of a date prior to the judgments (supra) of the Supreme Court, cannot be sustained.

8. We accordingly allow this appeal and in equity, since the Supreme Court had also not interfered with the compensation of Rs.50,000/-, modify the judgment of the learned Single Judge by reducing the compensation awarded to the respondent from Rs.3,25,000/- to Rs.50,000/- The respondent shall also be entitled to the entire interest accrued till date on the sum of Rs.3,30,000/- deposited by the appellant in this Court. We accordingly direct the Registry to, after deducting the sum of Rs.50,000/-

and the interest accrued on the FDR for Rs.3,30,000/- deposited by the appellants, refund the balance amount to the appellants. The said sum of Rs.50,000/- and interest be further kept in interest bearing fixed deposit till claimed by the respondent.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

**OCTOBER 11, 2012.
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