

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.08.2014

+ **W.P.(C) 3008/2010**

NIRMALA DEVI AND ORS

..... Petitioners

versus

UOI AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Satish Datt Sharma.

For the Respondents : None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. Petitioner Nos. 1 and 2 are parents of petitioner no.3, Master Deependra, who was born on 14.06.2001. Master Deependra is stated to be suffering from mental disorder and requires constant care. It is stated that he is abnormal, aggressive and completely unpredictable. The petitioner Nos. 1 & 2 are distraught by the condition of their son and its effect on their lives. The learned counsel for the petitioners has explained in length the miserable condition of petitioner Nos. 1 & 2 that has resulted from bringing up a child with mental disorder. The petitioners claim that they have a right to life under Article 21 of the Constitution of India and have prayed that the respondents make suitable arrangements for the livelihood, education and development of their son. The petitioner Nos. 1 and 2 are also claiming

resources from the respondents to bring up their son so that he may live in the society with dignity. In addition, petitioner nos.1 and 2 have claimed compensation of ₹50 lacs for the indignation and humiliation faced by them on account of failed sterilisation procedure performed on petitioner No.1.

2. Briefly stated, the facts are that petitioner no.2 was posted at Agra Cantt. during the year 2000, as he was a serving member of Indian Armed Forces. At the material time, the Government of India had floated a programme for family planning and petitioner nos.1 and 2 were persuaded to participate in that initiative. Petitioner no.1 was admitted to the Military Hospital, Agra Cantt. on 21.01.2000 and underwent a procedure for Tubectomic operation, which should have resulted in her sterilization. The sterilization certificate was also issued to petitioner no.1 on 03.02.2000. Apparently, the procedure was not successful and the petitioner conceived petitioner no.3, who was born on 14.06.2001. The learned counsel for the petitioners has alleged that the respondents ought to be made accountable for the negligence, as well as, the trauma that was faced by the petitioners, thereafter.

3. I have heard the learned counsel for the petitioners at length. Although, the petitioner nos.1 and 2 have alleged that the attending surgeons/medical staff were negligent and have prayed that the respondents be held liable to compensate the petitioners for the failure of sterilization procedure conducted on petitioner no.1, however, the grievance of the petitioner as one understands from the arguments that were advanced is not that the petitioners are aggrieved on account of any medical negligence but are distressed on account of the problems faced by them in bringing up a

child with a mental disorder.

4. The Supreme Court in the case of **Jacob Mathew v. State of Punjab:** (2005) 6 SCC 1 approved the tests as laid down in the case of **Bolam v. Friern Hospital Management Committee:** (1957) 2 All ER 118 (QBD) with respect to medical negligence and laid down the following principles:-

“(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: ‘duty’, ‘breach’ and ‘resulting damage’.

(2)... A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. ...

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he

did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.”

5. In **State of Punjab v. Shiv Ram and others**: (2005) 7 SCC 1, the Supreme Court following the decision in **Jacob Mathew** (*supra*) held as under:-

“We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilisation 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. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to satisfy Bolam’s test. So also, the surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100% exclusion of pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee.”

6. In the present case also, the fact that the sterilisation procedure had failed, does not necessarily indicate that the surgeons/medical practitioners attending petitioner No.1 were professionally negligent and thus no compensation can be granted to the petitioners in this proceeding. In my

view, no compensation for failure of the sterilisation procedure can be awarded also for the reason that the claim is highly belated and has been preferred after a period of 13 years. It is also pertinent to note that the petitioner No.1 could have terminated the unwanted pregnancy but petitioner Nos. 1 and 2 decided to proceed with the same, which resulted in the birth of petitioner No.3.

7. The condition of petitioner nos.1 and 2, as has been explained by the learned counsel for the petitioners does evoke the sympathy of this Court. Undoubtedly, the petitioners would have suffered immensely on account of the mental disorder of the child. However, a compensation on that account cannot be granted. While the Court may empathise with the condition of petitioner nos.1 and 2, there is no judicial principal which could be adopted to award any compensation to the petitioners on account of bringing up a challenged child.

8. In my view, the reference to Article 21 of the Constitution of India is not apposite in the facts of the present case. While, it is correct that the Supreme Court of India over a period of time has liberally interpreted the words “life and liberty” and Article 21 of the Constitution of India has been read to include “right to live with dignity”. However, the same is not applicable in the present case and cannot be extended to assist the petitioners in travails of their life. It is pertinent to note that the focus of the petitioners’ arguments was not to seek medical assistance or access to hospital but resources for the care and development of petitioner No.3. Undoubtedly, the state must endeavour to provide social security to its citizens, but given the constraints of resources a mandamus to provide the

same cannot be issued. The reference of learned counsel for the petitioners to Article 15(3) and Article 21A of the Constitution of India is also misplaced.

9. For the reasons stated above, this Court cannot grant relief to the petitioners. The writ petition is dismissed.

VIBHU BAKHRU, J

AUGUST 22, 2014

MK/pkv

