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S.A. No. 1043 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 1043 of 2007

and

M.P.No.3 of 2007

1. K.V.Anantha Narayanan

2. K.A.Krishnan

... Appellants

Vs.

1. K.G.Radhakrishnan

2. A.Natarajan

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.42 of 20024 on the file of Principal District Court, Krishnagiri @ Dharmapuri dated 26.10.2004 reversing the judgment and decree made in O.S.No.161 of 1990 on the file of Addl. Sessions Court, Krishnagiri @ Dharmapuri, dated 31.07.2002.

For Appellants

: Mrs. V.Srimathi

For Respondents

: Mr.P.Mani for R1

R2 – No appearance



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JUDGMENT

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Challenging the findings of the courts below, the defendants 1 and 3 have preferred this Second Appeal. The 1st respondent herein is the plaintiff and the 2nd respondent herein is the 2nd defendant.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Brief facts of the case is as follows :-

The plaintiff was an advocate by profession. In the year 1986, as he suffered with piles complaint, he consulted with one Dr.Govindaraj of Bagur initially, where he suggested to undergo surgery for piles. Accordingly, he took medical advise with 1st defendant, who also thoroughly tested him and assured and advised to go for surgery. So, he was admitted as inpatient in Rangachari Nursing Home and on 04.11.1986 the 2nd defendant/son of 1st defendant conducted a surgery. Though the agreement and understanding was that only the 1st defendant shall perform the piles operation, but in violation of terms, he allowed his son/2nd defendant to perform piles operation. When the plaintiff was in anesthesia, he was not able to raise any



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objections and without the plaintiff's consent, the 2nd defendant though not trained and inexperienced to perform the piles operation, he conducted surgery to the plaintiff. Due to his non-experience, the 2nd defendant removed lot of tissues and muscles in and around anus of the plaintiff, due to which even after the surgery and discharge, the condition of the plaintiff was found to be very bad to worse and the plaintiff lost bowl controlling due to the damage caused to the sphincters while performing the piles operation by the 2nd respondent. Again, on 03.12.1986 the plaintiff was admitted in the same Rangachari Nursing Home and 3rd defendant, who claiming more educated in the field opened the anus portion and stitched completely without finding delay caused and due to the negligence, the plaintiff felt severe pain. So, he got admitted again on 08.12.1986 in St.John's Medical College Hospital, wherein Doctors told that lot of tissues around sphincters were removed and damaged sphincters muscles. They expressed their inability to set right the damage caused to sphincters, thereby he spent Rs.10,000/- for treatment at St.John's hospital apart from mental agony, he became disabled since sphincters was damaged by the defendants while performing piles operation and he has been disabled from continuing his



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profession. He has also suffered with earning capacity and also sustained loss. Therefore, he claimed damages and restricted his claim to Rs.2 lakhs.

4. The said suit was contested by the defendants and while filing the written statement, they have admitted that they were doctors by profession. They have also admitted that the plaintiff was admitted as inpatient in Rangachari Nursing Home, which was run by the defendants at that time. The other allegations were denied. According to them, the plaintiff is the classmate of 2nd defendant and he voluntarily came to the defendants nursing home, which was existence for the past 25 years with good reputation. Due to long standing piles complaint, which was pressing on his sphincters had become very weak, that was the main reason for his incontinence of bowels and not because of surgery made by defendants 2 and 3. The incontinence also happened very rarely in piles surgery. In none of cases treated and operated by the defendants, there was no such complaint of incontinence, besides, the plaintiff was given best treatment. The plaintiff is solely responsible for complications and he acted against the medical advise after his discharge from hospital. Therefore, they felt that they have not



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committed any negligence on their part. Hence, they prayed to dismiss the suit as no merit.

5. Before the trial court, both parties adduced evidence and on considering the evidence as well as documents, the trial judge finally held that due to the negligent performance of surgery by the 2nd defendant, he removed the tissues of his sphincters muscle, due to which he suffered with complaint with incontinence and loss of bowel control. Therefore, the defendants are liable to pay compensation of Rs.2 lakhs as damages. But, interest was not awarded for the said damages. Accordingly, the suit was decreed without interest.

6. Challenging the non-awarding of interest, the plaintiff preferred an appeal in A.S.No. 42 of 2002, wherein the 1st appellate judge considering entire facts and nature of damages claim, by relying ratio laid down in the authorities as follows :-

- (i) Reported in **2003 (1) MLJ 586**, in the case of ***Ravi Fabrics vs. Shahernon traders and others***,
- (ii) reported in **AIR 1996 Bombay 293** in the case of ***Satish Solvant Extractions Private Limited vs. The New India***



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Assurance Company Limited;

(iii) Reported in ***1987 Karnataka 161*** in the case of ***Union of India vs. Visverwaraya Iron and Steel Limited and others***

(iv) reported in ***1994(2) MLJ reports (Supreme Court page 32 Union of India vs. Justice S.S.Sandhawalia (retd.) and others etc.,*** wherein it has been held as follows :-

“Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court”

and also considering Sec.34 (1) of C.P.C., the 1st defendant ordered 6% interest for the damages from the date of suit till realisation. Therefore, the 1st and 3rd defendants preferred this Second appeal challenging the findings of first appellate judge.

7. The learned counsel for appellant argues that when there is no direct evidence to prove negligence on the part of defendants/appellants, the trial judge without which awarding of damages as such is erroneous one and liable to be set aside. He would also argues that after the surgery, the



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plaintiff not properly followed the medical advise nor taken post operation care. Under such circumstances, awarding of damages against defendants is totally unfair and illegal. Further, he would also submit that the courts below erroneously presumed that the plaintiff was suffered as if wrong surgery done by the defendants without any medical proof. Therefore, he prayed to set aside the findings of court below.

8. The learned counsel for 1st respondent/plaintiff appeared and raised objections stating that the 2nd defendant without having much experience in performing the piles operation removed the tissue around anus, due to which even after the surgery, he was not completely cured and 3rd defendant also again performed the wrong surgery. Therefore, considering the negligent act on the part of defendants, the trial court has rightly granted damages and the 1st appellate judge also granted interest for the said damages, which needs no interference. Hence, he prayed to dismiss the appeal as no merit. Further, he would also pointed out that the defendants/appellants not preferred the first appeal before the first appellate judge challenging the award passed by the trial court. Therefore, they are not entitled to proceed with this appeal



and on the ground also, prayed to dismiss this Second Appeal as no merit.

9. Considering the facts and circumstances and considering both side submissions, this Second appeal is admitted on the following question of law:-

- (i) In a claim for damages are the courts below justified in decreeing the suit in the absence of proof of negligence by the doctors in the performance of the operation?*
- (ii) When the evidence of P.W.3 suggest that the contraction and dilation had been observed on P.W.1, should not the courts below come to a conclusion that the operation had been done with precision and care?*

10. It is an undisputed fact that the plaintiff has undergone piles surgery in the Rangachari Nursing Home, which was run by defendants 1 to 3. The 2nd defendant is the son of 1st defendant and relationship also undisputed one. According to plaintiff, he got advise from the 1st defendant,



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but he directed his son/2nd defendant to perform the piles surgery, who has less experience and did a surgery. Hence, at the time of surgery, he removed the tissues, therefore, he suffered uncontrol bowel after the surgery. Again, the 3rd defendant had conducted another surgery in a wrongful manner. Therefore, he suffered severe pain and made claim of damages for his negligence. But the contention of defendants that there was no medical proof with regard to sufferings as alleged by the plaintiff before the trial court, without which the trial court granted damages by concluding that there was a negligence on the part of defendants and prayed to set aside the same.

11. Before the trial court, the trial judge had framed number of issues. On the side of plaintiff, P.W.1 to P.W.4 were examined. On the defendants side, they themselves alone examined as D.W.1 to D.W.3. But, the plaintiff able to establish that after the surgery with the defendants, he went to another hospital viz., St. John's Hospital at Bangalore, where he consulted



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with Doctors and they have also tested him and they gave a letter marked as Ex.A6, which shows 80% of tissues in and around anus was damaged, but it requires some time to cure. Therefore, the plaintiff able to establish that he was not completely cured due to the surgery made by the defendants and still he was suffered and also got advise from St. John's Hospital at Bangalore. Therefore, the plaintiff was prima facie proves that there was a negligence on the part of defendants, due to which he suffered with bowel incontinence. Therefore, the trial court rightly awarded damages. Accordingly, the question of law (1) is answered.

12. With regard to the evidence of P.W.3, the appellants/defendants now challenged the same, but they have not preferred any first appeal before the first appellate court challenging the decree passed by the trial court. There was conditional order was imposed while they attempted to prefer the appeal, but they have not complied the same. Against which, they have preferred C.R.P.,but it was not reached finality till the disposal of first appeal. Therefore, as on date, the defendant has not challenged the findings of first appellate court. Without challenging the facts finding, straight away



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they have filed this second appeal and raised grounds, which they ought to have raised before the first appellate court, but they failed. So, they are not entitled to file the second appeal, even otherwise the findings on the side of plaintiff sufficiently proves that the plaintiff proved his claim. Therefore, the findings of trial court as well as first appellate court is confirmed and this Second Appeal is dismissed as no merit. The defendants are directed to pay award amount along with interest at the rate of 6% from the date of filing petition till realisation within a period of twelve weeks from the date of receipt of copy of this judgment. Consequently, the suit is decreed with interest. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. Principal District Court, Krishnagiri @ Dharmapuri.
2. Addl. Sessions Court, Krishnagiri @ Dharmapuri.

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3. Section Officer, VR Section, Madras High Court.

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