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W.P.(MD)NO.13369 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13369 of 2024

Soundarya

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
2. The Director,
Directorate of Health and Family Welfare,
DMS Complex, Chennai – 600 006.
3. The Joint Director of Medical Services,
DMS Office Campus,
Teynampettai, Chennai – 600 018.
4. The District Collector,
Ramanathapuram District.
5. The Deputy Director,
Family Welfare,
Kenikarai,
Ramanthapuram District.
6. The Dean,
Ramanathapuram Government Medical College Hospital.
7. Sivasankari,
Medical Practitioner,
Ramanathapuram Government
Medical College Hospital.

... Respondents



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Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to pay Rs.25,00,000/-(Twenty Five Lakh) towards compensation to the petitioner for the negligence in performing the Family Planning operation by the respondents 6 and 7 within the time stipulated by this Court.

For Petitioner : Mr.B.Mahendrarajan

For R-1 to R-6 : Mr.K.Balasubramanian,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for respondents 1 to 6.

2. The petitioner underwent what is known as Family Planning operation on 29.07.2023 in the seventh respondent hospital. The petitioner became pregnant. It was also confirmed on 08.03.2024. The petitioner is now seven months pregnant. Alleging that only on account of negligence in performing Family Planning operation the petitioner



became pregnant, this writ petition has been filed demanding compensation to the tune of Rs.25,00,000/-.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on the order dated **28.04.2023** made in ***W.P.(MD) No.4505 of 2016 (Vasuki V. The Secretary to Government)*** wherein relief was granted in the following terms:-

“16.Following the same and considering the economic and social background of the petitioner and other circumstances, this Court is passing the following order:

The petitioner is entitled for a compensation of Rs.3,00,000/-. The respondents shall provide free education to the third child of the petitioner, either in a Government School or in a Private School. The fees already paid, if any, shall be refunded and all the expenses on books, stationary, uniforms and other miscellaneous educational expenses shall also be met by the respondents. Further, the respondents shall pay a sum of Rs.1,20,000/- per year [Rs. 10,000/- per month] to meet the child's need for food and proper up-bringing till he completes his graduation or attaining 21 years, whichever is earlier.”

4. The learned counsel called upon this Court to grant relief as sought for. I am not swayed by the said submissions. The learned Special



Government Pleader drew my attention to G.O.(Ms)No.119 Health and Family Welfare (R1) Department dated 30.05.2013 as well as the conditions set out in the application form which was signed by the petitioner before undergoing operation. He also relied on a catena of decisions to contend that the prayer made in the writ petition is clearly not maintainable. According to the learned Special Government Pleader, the petitioner is only entitled to solatium of Rs.30,000/- and nothing more. He called upon this Court to pass appropriate orders.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is true that the order dated **28.04.2023** made in ***W.P. (MD)No.4505 of 2016*** supports the case of the petitioner. A learned Judge of this Court had followed the earlier order dated **25.01.2022** made in ***W.P.No.22349 of 2018 (Dhanam V. The Secretary to Government)***. Even before the judgment of Dhanam case, the view of this Court was otherwise. Vide order dated **03.02.2021** made in ***W.P.(MD)No.19742 of 2018***, a learned Judge of this Court held as follows:-

“11. As regards the claim for Rs.10 lakhs as



compensation, this Court finds that the same is untenable, as the claim was not supported by any material or any averments. In the absence of any material, the claim cannot be considered by this Court by exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

12. As regards the availing of the benefit of the scheme and also with reference to the Government Order in G.O.(Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013, the only objection is that the claim was not made within a period of 90 days. But, what is to be seen in this case is that, the failure of the family planning operation became known to the petitioner only when she became pregnant in 2017 and therefore, 90 days period must be counted from the date on which the pregnancy was recorded. Therefore, the 90 days period cannot be said to commence from the date of the operation conducted in 2014. Moreover, in a beneficial scheme, like the present one, there will always be a reasonable delay in claiming compensation. Further, the claimants in such situation by and large hail from rural areas, may not be aware of the limitation provided in the scheme and more so the policies of the Government in order to make a prompt claim. That does not mean that their claim is to be summarily rejected by invoking the limitation, as provided in the G.O.(Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013 or in the manual as extracted supra. The compensation of this nature is very meagre and



such lesser amount, contemplated in the policy, cannot be denied to the petitioner, if the averments of the petitioner are found to be true and supportive.

13.This Court is of the considered view that the compensation provided under the scheme read with G.O. (Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013, ought to be construed liberally to ensure that the benefits contemplated reach the maximum beneficiaries, rather than being perfunctory in sticking to the rigours of the period of limitation.

14.In the above circumstances, the claim of compensation of Rs.10 lakhs is rejected outright. However, the petitioner being wronged with faulty family planning operation at the hands of the 3rd respondent cannot be left without being compensated even with the means solatium of Rs.30,000/-.

15.Therefore, this Writ Petition is allowed to the extent that the respondents are directed to grant payment of Rs.30,000/- as compensation to the petitioner, if the petitioner's claim is otherwise in order. Such amount shall be paid to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.”

7. Before undergoing Family Planning operation, the individual has to give her consent in the prescribed form. Clauses 6, 7 and 8 of the said form read as follows:-



“6) குடும்ப நல அறுவை சிகிச்சைக்குப் பின்னர் எனக்கு / என் மனைவிக்கு மாதவிலக்கு வராமல் தவறிப்போனால் இது குறித்து இரண்டு வாரங்களுக்குள் மருத்துவரிடம் / மருத்துவ நிலையத்தில் நேரில் வந்து தெரிவிப்பேன். இலவச மருத்துவ கருச்சிதைவு செய்து கொள்வேன்.

7) குடும்ப நல அறுவை சிகிச்சையினால் ஏற்படும் சிக்கல்கள் / அறுவை சிகிச்சை தோல்வி உட்பட ஏற்படும் நிகழ்வில் இந்திய அரசின் குடும்ப நல காப்பீட்டுத் திட்டத்தின் கீழ் நடைமுறையில் உள்ள விதிகளின்படி வழங்கப்படும் இழப்பீட்டுத் தொகையை முழுமையான, இறுதியான தீர்வாக ஏற்றுக்கொள்வேன்.

8) குடும்ப நல அறுவை சிகிச்சை தோல்வியுற்று அதன் காரணமாக நான் / எனது மனைவி கருவுற்றால் அவ்வாறு கருவுற்ற இரண்டு வாரங்களுக்குள் என்னால் கருச்சிதைவு செய்ய முடியாமல் போனால், இந்திய அரசின் குடும்ப நல காப்பீட்டுத் திட்டத்தின் கீழ் வழங்கப்படும் இழப்பீட்டுத் தொகைக்கும் அதிகமாக அறுவை சிகிச்சை தோல்வியுற்றதற்கோ அல்லது கருவிலிருக்கும் குழந்தையின் வளர்ப்புச் செலவுக்காகவோ, எந்த ஒரு நீதிமன்றத்தின் மூலமாகவும், இழப்பீட்டுத் தொகை கோரமாட்டேன் என்றும் உறுதியளிக்கிறேன்.”

8. A similar case was the subject matter for consideration in ***S.A.No.751 of 2005 (Joint Director of Health Services V. Palaniammal)*** dated ***11.08.2018***. A learned Judge of this Court held as



follows:-

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“11.The plaintiff has examined herself in support of her case and on a perusal of the evidence of the plaintiff, examined as PW1, during the course of cross examination, it is seen that the plaintiff has clearly admitted that only after accepting the condition as regards the failure of the family planning operation and signing the necessary form, marked as Ex.B1, she had underwent the operation and accordingly, it is seen that the case of the plaintiff that she had been assured that she would not get conceived again after the family planning operation as such cannot be countenance in any manner. From the evidence of DW1, the doctor, who had performed the family planning operation on the plaintiff and the document marked as Ex.B1, it is found that the plaintiff has given her consent for undergoing the sterilisation operation in necessary form and a reading of the contents of the abovesaid form would go to show that the plaintiff had been duly warned of the chances of failure of the operation to be done on her, for which, the Government hospital / operating surgeon could not be held responsible by the plaintiff or by anyone claiming under her and accordingly, it is found that the plaintiff had also admitted that only after giving consent and knowing the chances of failure of the family planning operation, she had undergone the operation by the defendants. Therefore, when the plaintiff, having understood the criteria of the abovesaid operation and accordingly, the operation had



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been done on the plaintiff by DW1 and when the plaintiff during the course of evidence has not disputed the capability of DW1 in performing the abovesaid operation on her and all that she would state that she does not know whether DW1 is an experienced medical practitioner and in such view of the matter, it is found that the plaintiff after having fully understood the consequences of the failure of the sterilisation operation, is found to have undergone the said operation.

12. No doubt, the plaintiff had again got conceived and it is further found that the plaintiff gave birth to a female child thereafter, and thereby attributed negligence on the part of the defendant by contending that the defendants' doctor who had performed the sterilisation operation on her, has not performed the same in a proper manner, which resulted in the plaintiff again getting conceived. It is found that on the above basis the plaintiff had come forward with the suit seeking necessary compensation from the defendants.

...

18. The plaintiff's counsel in support of her case, placed reliance upon the decisions of our High Court dated 08.12.2006 passed in Second Appeal No.1819 of 2002 and CMP No.15372 of 2002 (Dr.Alice George and another Vs. Lakshmi), dated 26.07.2011 passed in Second Appeal (MD) No.129 of 2006 and CMP (MD) No.932 of 2006 (The District Collector, Thanjavur District and 2 others Vs.



Saraswathi) and dated 30.10.2014 passed in Second Appeal No.683 of 2006 (Sumathi Vs. Dr. Suganthi, Government hospital, Namakkal District and 2 others). However, in the abovesaid cases, it is found that the Courts had held that the burden is heavy upon the medical officer to prove that there was no negligence in performing the sterilisation surgery. However, when as per the decision of the Apex Court above referred to, the burden is only upon the plaintiff to establish the negligence on the part of the surgeon in performing the said surgery and further, the proof of negligence shall also have to satisfy Bolam's test and in such view of the matter, when, insofar as the present case is concerned, the plaintiff having failed to establish any negligence as such on the part of the doctor in performing the sterilisation operation and when there is also no material placed on record to show that the plaintiff had adhered to the instructions given by the concerned doctor to be followed during the post operative period and there is also no proof that the plaintiff had not undergone any sexual intercourse within the period of one year from the date of operation as such and when also it is noted that there are possibilities of the plaintiff getting again conceived despite the sterilisation operation even on account of natural causes as held by the Apex Court in the decision referred to above and when the conduct of the plaintiff further goes to show that the plaintiff had not taken effective steps to get the child aborted on coming to know



of the conception, all the facts put together would only go to show that the plaintiff cannot be allowed to seek compensation from the defendants as such and accordingly, it has to be held that the Courts below had erroneously held that the plaintiff is entitled to seek compensation from the defendants by shifting the burden upon the defendants by holding that they had failed to establish that the operation had been conducted by the concerned doctor in a proper manner. The first appellate court is found to have held that inasmuch as the defendants had not endeavoured to submit the plaintiff for further medical examination, on that basis appears to have upheld the plaintiff's case. However, when as above noted, the plaintiff had not endeavoured to consult the Government hospital as regards the conception she had again attained, in such view of the matter, there is no need on the part of the defendants to have subjected the plaintiff to medical examination as such when the plaintiff had proceeded to give birth to a child after getting private consultation and accordingly, it is seen that the Courts below, by erroneously shifting the burden on the defendants, had granted relief in favour of the plaintiff, which cannot be sustained in the eyes of law.

19. In the light of the above discussion, the Courts below had failed to appreciate that there is also the possibility of failure of the sterilisation operation and again failed to note that the plaintiff, only after gaining knowledge about such failures, had given the consent and



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volunteered to undergo the sterilisation operation and when the plaintiff had not taken steps to consult the Government hospital on coming to know of the conception again after the operation and when the plaintiff had failed to establish any negligence on the part of the doctor in performing the operation, the substantial questions of law 1 to 3 formulated in this second appeal are accordingly answered against the plaintiff. The fourth substantial question of law as regards the maintainability of suit under civil code for compensation, it has not been shown that the civil action would be barred in seeking the compensation and accordingly, it is held that the civil action is maintainable and the fourth substantial question of law is answered accordingly.”

9. The judgment rendered in S.A.No.751 of 2005 dated 11.08.2018 and the judgment rendered in W.P.(MD)No.19742 of 2018 are prior in point of time. If contra view is to be taken, the matter ought to have been referred to the Hon'ble Division Bench. Therefore, I am inclined to follow the earlier decisions and not the decision relied on by the learned counsel appearing for the petitioner. This is all the more so because of yet another order passed in ***W.P.(MD)No.21669 of 2021 (V.Christalmajini V. The Principal Secretary) dated 21.11.2023.***

Paragraph Nos.3, 4 and 5 read as follows:-



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“ 3. The fifth respondent has filed a counter affidavit and has taken a stand that as per the Scheme named as “Family Planning Indemnity Scheme, 2013”, the petitioner is entitled for a sum of Rs.30,000/- (Rupees Thirty Thousand only).

4. In the considered view of this Court, the issue involved in the present Writ Petition is squarely covered by the Order of this Court in the case of B.Lekshmi Vs. The Principal Secretary to Government, Health and Family Welfare Department, St.George Fort, Chennai-600 009 and others in W.P.(MD).No.9596 of 2021, dated 10.11.2023 and the relevant portions in the order are extracted hereunder:

“5. The short issue that arises for consideration is as to whether the sixth and seventh respondents can be made liable for the pregnancy of the petitioner even after the sterilization operation was conducted on the petitioner. The issue in hand is squarely covered by the Judgment of the Hon'ble Apex Court in the case of State of Punjab Vs. Shiv Ram and Others reported in (2005) 7 SCC 1 and the relevant portions in the Judgment are extracted hereunder:

“25. We are, therefore, clearly of the opinion that merely because a woman having undergone a 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. The claim in tort can be sustained only if there was negligence on the part of the surgeon in



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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.

26. The cause of failure of sterilization operation may be obtained from laparoscopic inspection of the uterine tubes, or by x-ray examination, or by pathological examination of the materials removed at a subsequent operation of re-sterilisation. The discrepancy between operation notes and the result of x-ray films in respect of the number of rings or clips or nylon sutures used for occlusion of the tubes, will lead to logical inference of negligence on the part of the gynaecologist in case of failure of sterilisation operation. (See: Law of Medical Negligence and Compensation by R.K. Bag, Second Edition, p.139)

27. Mrs. K. Sarada Devi, the learned counsel appearing for the plaintiff-respondents placed reliance on a two-Judge Bench decision of this Court in State of Haryana & Ors. v. Santra, wherein this Court has upheld the decree awarding damages for medical negligence on account of the lady having given birth to an unwanted child on account of failure of sterilization operation. The case is clearly distinguishable and cannot be said to be laying down any



law of universal application. The finding of fact arrived at therein was that the lady had offered herself for complete sterilization and not for partial operation and, therefore, both her fallopian tubes should have been operated upon. It was found as a matter of fact that only the right fallopian tube was operated upon and the left fallopian tube was left untouched. She was issued a certificate that her operation was successful and she was assured that she would not conceive a child in future. It was in these circumstances, that a case of medical negligence was found and a decree for compensation in tort was held justified. The case thus proceeds on its own facts.

28. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to sub- section (2) of Section 3 provides



"Explanation II. _____ Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman."

29. And that provides, under the law, a valid and legal ground for termination of pregnancy. If the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.

30. The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed."

6. It is clear from the above Judgment that merely because a woman had undergone a sterilization operation and thereafter, she became pregnant and delivered the child, the operating surgeon or the Hospital cannot be held liable for compensation on account of the unwanted pregnancy or



the unwanted child. The Hon'ble Apex Court dealt with in detail the various reasons for the failure of the sterilization operations. It was noted that the methods of sterilization that are so far known to the medical science are not 100% safe and secure. In spite of the sterilization operation being performed, the woman can become pregnant due to natural causes. Therefore, the Hon'ble Apex Court held that merely because a sterilization operation had taken place, that is not an assurance that the women will never become pregnant and such 100% assurance cannot be given by any one.”

5. In view of the above, the relief sought for by the petitioner cannot be granted by this Court and it is left open to the petitioner to receive the sum of Rs.30,000/- (Rupees Thirty Thousand only) from the fifth respondent under the Scheme.”

10. Overwhelming weight of the authorities supports the stand taken by the learned Special Government Pleader appearing for the respondents. It would be a different matter altogether, if the petitioner is able to demonstrate that the Family Planning operation itself was performed negligently. There is no such material before me. One cannot conclude that there was negligence, merely by the factum of subsequent conception. There is no necessary correlation between the two. In the very nature of things, such operations cannot be made foolproof. I cannot



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direct compensation to the tune of Rs.25 Lakhs. I can only direct the first respondent to pay a sum of Rs.30,000/-(Rupees Thirty Thousand only) as solatium to the petitioner herein. This writ petition stands partly allowed. Liberty is given to the petitioner herein to file civil suit in this regard. No costs.

26.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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WEB COPY **To:**

1. The Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
2. The Director,
Directorate of Health and Family Welfare,
DMS Complex, Chennai – 600 006.
3. The Joint Director of Medical Services,
DMS Office Campus,
Teynampettai, Chennai – 600 018.
4. The District Collector,
Ramanathapuram District.
5. The Deputy Director,
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G.R.SWAMINATHAN,J.

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