

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 77 of 2009

- State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare, Mantralaya, D.K.S. Bhawan, Raipur (C.G)

----- Appellant (Defendant No.6)

Versus

1. Gajendra Singh, s/o Lekhram Singh, aged about 36 years, Caste Rajput, Occupation : unemployed
..... ***(Respondent /Plaintiff No.1)***
2. Minor Ku. Reetu, D/o Gajendra Singh, Mother: Late Smt. Meenakshi Devi, aged about 6 years, Occupation : dependent
..... ***(Respondent/Plaintiff No.2)***
3. Minor Ku. Khushbu, D/o Gajendra Singh, Mother: Late Smt. Meenakshi Devi, aged about 4 years, Occupation Dependent
..... ***(Respondent/Plaintiff No.3)***
4. Minor Master Kuldeep Singh, S/o Gajendra Singh, Mother Late Smt. Meenakshi Devi, aged about 2 years, Occupation : Dependent
..... ***(Respondent/Plaintiff No.4)***

Respondents 2 to 4 through Guardian father Shri Gajendra Singh, s/o Lekhram Singh, aged about 36 years.

All residents of Village Indira Nagar, Lailunga, Police Station & Tahsil Lailunga, District Raigarh.

5. Dr. R.S. Upadhyay, S/o (Not known to the appellants), at present working at Primary Health Centre, Lailunga, Police Station & Tahsil Lailunga, District Raigarh, Chhattisgarh
..... ***Respondent/ Defendant No.1.***
6. Dr. Sunil Nigam, s/o (Not known to the appellants), District Raigarh, C.G. At present Primary Health Centre, Hidli, Betul, District Betul (M.P) ***Respondent/ Defendant No.2.***
7. Dr. A.K. Kushwaha, s/o (Not Known to the appellants), K.G. Government Hospital, Distt. Hospital, Raigarh, Chhattisgarh.
..... ***Respondent/Defendant No.3.***
8. Smt. Shivani Ohadar, W/o. (Not known to the appellants) Occupation: Nurse, Primary Health Centre, Lailunga, District Raigarh, Chhattisgarh - ***Respondent/Defendant No.4.***
9. Civil Surgeon, K.G. Hospital/District Hospital, Raigarh, Chhattisgarh ***Respondent/ Defendant No.5***

For the Appellant : Shri S.C. Khakaria, Dy. Advocate General
For Respondents 1 to 4 : Shri F.S.Khare, Advocate.
For Respondents 5 to 8 : Shri Sanjay Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT

01/07/2015

1. This is an appeal against the judgment and decree dated 10.12.2008 passed by the Court of District Judge, Raigarh in Civil Suit No. 01/2005 whereby the decree for Rs.1,80,000/- has been passed against the respondent.
2. Brief facts of the case are that on 24.11.2004, a health camp was organized at Primary Health Centre, Lailunga for conducting Tubectomy (*Nasbandi*) operation. In such camp, deceased Meenakshi Devi was admitted to undergo the operation for Tubectomy. It was pleaded by the plaintiff that original defendant no.1 R.S.Upadhyay & original defendant no.2, Dr. Sunil Nigam, were working at Primary Health Centre, Lailunga and original defendant no.3, S.K.Kushwaha was working as doctor in District Hospital Raigarh. Defendant No.4, Smt. Shivani was a nurse in Primary Health Centre, Lailunga. It was stated that at the direction of the State, Tubectomy camp was organized at Lailunga wherein before Tubectomy operation, at the instance of defendants 1 to 3, some injections were administered to Meenakshi Devi. After giving injection, her condition started deteriorating and she lost her sense and thereafter, she was referred to the District Hospital and

eventually she died. It was pleaded that the death was caused due to negligence and administration of wrong injections to the deceased Meenakshi Devi. It was stated that the deceased was a teacher, aged about 28 years and used to earn Rs.2500/- per month and taking her age at the time of her death, an amount of Rs.16,20,000/- was claimed.

3. Defendants 1 to 5 filed their written statements and contended that no negligence was committed during such operation of Meenakshi Devi. It was stated that on primary inspection of the patient, she was found to be fit to undergo Tubectomy operation and thereafter, the injection namely Xylocaine & Benzathine Peniciline were given in small quantity to observe the reaction of the said injections. Thereafter, the injections of Atropine, Pentazocine & Diazepam were given which were given to all the patients before conducting operations. After administering the above injections, one of the injections reacted to the patient whereby her condition started deteriorating, therefore, she was primarily treated at Primary Health Center, Lailunga and when no improvement was noticed, she was referred to District Hospital, Raigarh. It was stated that Tubectomy operation was to be operated at the risk of the patient itself.
4. The learned trial Court after evaluating the evidence which was placed on record came to finding that the incident occurred due to negligence of the defendant doctors and as such an amount of Rs.2 lakhs was awarded. The same is under challenge.
5. Learned counsel for the State has contended that there is no evidence on record to show that there has been negligence on the part of doctors. He stated that the postmortem report Ex.P-4

also do not state the reasons for death and therefore in absence thereof, it cannot be stated that the death was caused due to negligence of any of the doctors of the State. He further submits that the evidence has come on record which would go to show that before the examination, patient was examined and after examination, required medicine and injections were administered on the deceased which were given to other patients too, therefore, the death of Meenakshi Devi was for some other reasons or due to shock. He would submit that therefore the act of negligence cannot be attributed to the defendant-doctors and the decree which has been passed against the State is liable to be set aside.

6. Per contra, learned counsel for the respondents/ plaintiffs supported the judgment and decree and submits that in order to discharge the liability the State has not produced the evidence to negate the fact that no negligence was committed by the State. He further contends that on the campaign and assurance of the State, the deceased reposed confidence in State Government and submitted herself to the operation which eventually resulted into death and therefore, the State cannot raise any objection that it was not negligent. He further submits that from the evidence along-with the statement of doctors, it is clear that after administering injections to the deceased, her condition started deteriorating which eventually resulted into death, therefore, the death was caused due to some overdose of the injection. Consequently, the State was correctly held liable for the negligence.
7. Counsel appearing on behalf of the defendant-Doctors namely respondents 5, 6, 7 & 8 adopted the arguments of the State and

submits that the impugned judgment and decree is liable to be set aside.

8. I have heard learned counsel for the parties at length and have also perused the evidence and documents exhibited on record.
9. Admittedly, on 24.11.2004 deceased Meenakshi Devi appeared in person in the camp which was organized at Primary Health Center, Lailunga for tubectomy operation. It is evident from the consent letter Ex.D-1. A perusal of the consent letter shows that she consented for undergoing tubectomy operation. Now, if the statement of husband of deceased is surveyed, it would reveal that he stated that before the admission to the tubectomy operation camp, his wife Meenakshi was hale and healthy and she was not suffering from any disease. It is further stated that after she was admitted in the camp, at the instance of the doctors i.e., original defendants 1 to 3, the nurse, defendant no.4 administered injections to his wife. It is stated that after giving injections, his wife started complaining giddiness and became unconscious. Therefore, he immediately went to Dr. R. S. Upadhyay, Dr. Sunil Nigam, Dr. S.K. Kushwaha and the nurse and complained about the same but the defendants ignored the complaint and stated that after the injection, the same happens and asked them to wait. After coming back from the doctor, he saw that his wife has lost consciousness and the condition was also deteriorated but despite the critical condition, no one took care of the patient. Subsequently, Dr. S.K. Kushwaha came and examined the patient and he stated that she is dead. Thereafter, he went back into the doctors room and subsequent to it, she was referred to the main hospital. The death of Meenakshi Devi is also not in dispute. Ex.P-4 is the postmortem. The

postmortem report shows that she was not having any external injuries and the body was containing the injection marks. After the postmortem, her viscera was preserved in two jars and they were sealed for further examination. The report further shows that the cause of death was syncope due to shock and no definite opinion can be given for cause of death and consequently the viscera was preserved for chemical analysis.

10. A perusal of the record shows that no viscera report has been placed on record by the State. The Statement of Dr. Anil Kumar (D.W.1) shows that according to him, he was given the charge to perform tubectomy operations on the said date and accordingly he went to the Primary Health Center, Lailunga. The patients were examined by Dr. Rajkumar Gupta and himself and they found that Meenakshi was fit for operation. Thereafter, this witness went inside the operation theater and started preparation for the operation. In the meanwhile, he was informed that *Mahila* Meenakshi is not well. When he came out from the operation theater, he saw that the lady was being treated by Dr. R.S. Upadhyay & Dr. Raj Kumar Gupta and the patient was in shock. Thereafter, Meenakshi was referred to the District Hospital for better treatment. The statement of this Doctor would go to show that he was present for a limited period and after examination when he went inside the operation theater the patient was alright. No further statement is made by this witness as to what transpired after he went inside the operation room except the statement of husband of deceased.
11. Therefore, it is clear that everything happened subsequently after the injection was given to the patient as the same is not in dispute. The doctor further stated that after death of patient

Meenakshi, it was informed to BMO and CMO and the matter was subjected to enquiry and after enquiry, a report was sent to the State Government wherein it was found that the doctors were not responsible for any negligence. A perusal of the entire case file does not show that the said report is on record. Further, a perusal of the written statement wherein the said facts were added by way of amendment specifically show that after death of Meenakshi, the matter was brought to the notice of BMO & CMO, Raigarh and a thorough enquiry was conducted and the Enquiry Officer had found that the doctors have not committed any sort of negligence. So except the pleadings and oral statement, no documentary evidence i.e., the report is on record.

12. As observed, report of such enquiry is not placed on record. Consequently the State who was holding the best evidence to establish that no negligence was found that of doctors were obliged to produce the said enquiry report during trial. Therefore, in absence of production of any such enquiry report before the Court, the adverse inference can be drawn for withholding the documentary evidence which was in support of State. Further, statement of D.W.3 namely Dr. R.S. Upadhyay would show that at para 5 he has stated that the deceased was initially administered injections of Xylocaine & Benzathine Peniciline to observe symptoms of reaction. When no reaction was found, subsequently she was administered injections of Atropine, Pentazocine & Diazepam and before she was carried for operation, she got reaction of some of the injections and her condition started deteriorating. Therefore, one thing is established that the condition of the patient deteriorated

because of reaction of some of the injections. D.W.3 M.L. Dadsena working in the office of Chief Medical and Health Officer stated that the enquiry report for death of Meenakshi was sent by the Chief Medical and Health Officer, Raigarh, to the Director, Health Services Raipur vide letter No.7515 dated 27.11.2004 and it was found in the enquiry that no negligence of any sort was committed by the doctors. As averred earlier, it is not placed on record. Consequently in the facts of the case, in absence of such report when the fact is established that after administering the injections, the condition of the patient deteriorated, it can be very well inferred that eventually the patient died because of the cumulative effect of reaction of the injection administered on her. The State for the reasons best known to them has held back the enquiry report. If the State was confident of such enquiry report, it should have been placed before the Court for inspection so as to substantiate their stand.

13. In a case law reported in **(2014) 1 SCC 384 Balram Prasad Vs. Kunal Saha and others**, Their Lordships have interpreted the word “cumulative effect”. It reiterated the judgment rendered in case of **Malay Kumar Ganguly v. Sukumar Mukherjee (2009) 9 SCC 221** and held thus:

“186. A patient would feel the deficiency in service having regard to the cumulative effect of negligence of all concerned. Negligence on the part of each of the treating doctors as also the Hospital may have been the contributing factors to the ultimate death of the patient. But, then in a case of this nature, the Court must deal with the consequences the patient faced, keeping in view the cumulative effect. In the instant case, negligent action has been noticed with respect

to more than one respondent. A cumulative incidence, therefore, has led to the death of the patient.

187. It is to be noted that the doctrine of cumulative effect is not available in criminal law. The complexities involved in the instant case as also the differing nature of negligence exercised by various actors, make it very difficult to distil individual extent of negligence with respect to each of the respondent. In such a scenario finding of medical negligence under Section 304-A cannot be objectively determined.”

14. Applying the aforesaid principles to the instant case, if the evidence on record is read, it would go to show that the husband of the deceased has categorically stated that after the injection was given in the body of his wife, her condition started deteriorated. Admittedly, the tubectomy operations were conducted in a camp organized by the State, therefore, if the law of estoppel is applied, the citizens believe that the State had the authority to hold camps, perform operations and benefit individuals and the nation. Therefore, the question falls for consideration as to whether the State is estopped from opposing just claims of the citizens if the results are adverse. In a case law reported *in 1997 ACJ 1224 – State of Madhya Pradesh Vs. Asharam*, the High Court of M.P., has held in para 19 as follows:

“19. In 1948, Dinning, J, in Robertson v. Minister of Pensions, (1949) 1 KB 227, laid the foundation of promisory estoppel in public law. Prof. De Smith in his judicial Review of the Administrative Action, 4th Edn. At Page 103, observed that:

“the citizen is entitled to rely on their having the authority that they have asserted.”

15. In view of the above principles, if the results are adverse, the

citizens, therefore, are entitled to rely on their having the authority what the State has asserted. The State in the instant case has asserted that tubectomy operations are to be performed at a particular camp and the individual citizens would have believed in such statement that the operation would be performed with all due care. In that view of the matter, if the results are adverse, the appellant State would be estopped from opposing the just claim as the State has a promise to keep to justice and should follow the assurance intended to be acted upon and in fact acted upon. Consequently, since the operations were conducted in the camp of the State, the State is vicariously liable for the negligence on the part of its doctors or even otherwise. Applying the doctrine of strict liability in the facts of this case, the State cannot absolve the liability.

16. In view of what has been discussed above, I am not inclined to interfere with the impugned judgment and findings of the learned trial Court whereby a lumpsum amount of Rs.1,80,000/- was directed to be paid. In the result, there is no merit in the appeal and it is dismissed. The claimants are entitled to receive Rs.1,80,000/- from the defendants with interest @ 6% per annum from the date of filing the suit till the date of realization. The appellant shall bear the cost of litigation of respondent-plaintiffs. The decree be drawn accordingly.

Sd/-
GOUTAM BHADURI
JUDGE

F.A. No. 77 of 2009

(State of Chhattisgarh Vs. Gajendra Singh & Others)

HEADLINES

**DEATH IN TUBECTOMY CAMP - STATE IS ESTOPPED TO
OPPOSE CLAIM FOR NO NEGLIGENCE.**

महिला नसबंदी शिविर में मृत्यु – उपेक्षा न होने पर राज्य दावे का विरोध न
करे।