

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.829 of 2012 (O&M)
Date of Decision: July 14, 2016.**

Rajeshwari

.....APPELLANT(s).

VERSUS

State of Haryana and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Gupta, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Under the Family Planning Scheme and Policy of State of Haryana, plaintiff underwent sterilisation operation on 09.02.2004. Later on she came to know about her pregnancy and ultimately delivered a baby boy on 15.09.2004. She claimed damages to the tune of ₹2 lacs for the negligence on the part of doctor who conducted her operation. The suit was decreed by learned Additional Civil Judge (Senior Division), Karnal and the appellant-plaintiff was allowed to recover a sum of ₹2 lacs along with interest @ 18% per annum from the date of birth of child i.e. 15.09.2004 till the actual date of payment.

2. State of Haryana filed appeal which was accepted by learned District Judge, Karnal against which the plaintiff has filed this appeal.

3. I have heard learned counsel for the appellant and have perused the paper book and judgment of the Courts below with his assistance.

4. Learned counsel for the appellant has argued that appellant belong to poor strata of the society and was already having four children when she had undergone tubectomy to prevent the birth of any other child but the operation failed and she became pregnant. Learned first Appellate court accepted the appeal on the ground that appellant was already pregnant at the time of operation, as such, there was no negligence on the part of doctor, who conducted the operation and secondly, it was specifically mentioned in the sterilisation certificate (Ex.P6) that there is failure rate of 18 to 20 cases out of 1000 cases, as such, there is no negligence of the doctor.

5. Learned counsel for the appellant has argued that before conducting the operation, all the required tests are carried and in case, the appellant was already pregnant, this fact could be brought to her notice but the doctor conducted the operation which shows negligence on his/her part.

6. It is evident that the child was born to plaintiff after 299 days/31 weeks of the operation. The birth of child was not premature which indicate that the appellant was already pregnant at the time of operation, as such, there was no failure of the family planning operation. Secondly, there is failure rate of sterilisation operation and if a lady, who has undergone sterilisation operation, conceives, it is always not a case of negligence on the part of doctor or team of doctors, who conducted the operation. Learned first Appellate Court rightly observed that the plaintiff ignored the instruction to attend the hospital one month after the operation. She rather came three months later when she was already family way. By that time, pregnancy could not be terminated, as such, the negligence was on the part

of appellant-plaintiff herself. The appellant-plaintiff had not produced any evidence of negligence on the part of doctor in conducting or failure of operation. She has not produced any evidence or expert opinion to show that any test required before conducting tubectomy, was not carried out or that the doctor or team of doctors, who performed the operation, was negligent in any manner. It is well known that the family planning operation has also failure rate and every case where a lady conceives after the operation, does not indicate negligence on the part of doctor or team of doctors, who conducted the operation.

7. Learned Additional Civil Judge by ignoring all the facts allowed compensation only on the ground that appellant-plaintiff had given birth to a child despite operation without looking into the aspect that in order to get compensation, she has to prove negligence on the part of doctor or team of doctors, who conducted the operation. The first Appellate Court has rightly appraised the evidence in proper perspective while setting aside the judgment and decree passed by learned Additional Civil Judge (Senior Division), Karnal.

8. Learned counsel for the appellant could not make out during the course of arguments that any of the observation recorded by the first Appellate Court is based on misreading of evidence or the documents on record, calling for any interference.

9. No substantial question of law requiring determination arises in this appeal.

Dismissed.

(SURINDER GUPTA)
JUDGE