IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.69 OF 2013
WITH
CIVIL APPLICATION NO. 8871 OF 2010
IN
SECOND APPEAL NO.69 OF 2013

1. The State of Maharashtra,
   Through the Collector, Hingoli.

2. The Director of Health Department,
   Pune.

3. The Civil Surgeon,
   General Hospital, Hingoli.

4. Dr. C.P. Bangar,
   Medical Officer, General Hospital,
   Hingoli. ..APPELLANTS

VERSUS

1. Sandip s/o Vithal Landage,
   Age: 12 years, Occ: Nil,
   Minor U/Guardian father
   Laxman Jadhav,
   Age: Adult, Occ: Agri.,
   R/o. Karajgaon, Tq. Omerga,
   District Latur.

2. The Chief Executive Officer,
   Zilla Parishad, Hingoli.

3. The District Health Officer,
   Zilla Parishad, Hingoli. ..RESPONDENTS

Mrs Vaishali N. Patil-Jadhav, A.G.P. for appellants;
Mr S.R. Yadav (Lonikar), Advocate for respondent Nos. 2 and 3

CORAM : N.W. SAMBRE, J.

DATE : 4th AUGUST, 2017

ORAL ORDER :

Respondent No.1 to the present appeal filed Special Civil Suit No. 30 of 2005 for recovery of an amount of Rs. 2,00,000/- towards damages with interest, which came to be decreed by the judgment and order dated 29th April, 2009 passed by the Civil Judge, Senior Division, Hingoli, confirmed in Regular Civil Appeal No. 37 of 2006 passed by the Adhoc District Judge-1, Hingoli. As such, this second appeal.

2. It is the case of original complainant that on 28th February, 2003 while he was playing game, suffered injury to his left hand and was taken to general hospital, Hingoli for treatment. Defendant No.4 Medical Officer examined him, demanded amount for treatment and put plaster over fractured portion of the hand. On 3rd March, 2003, upon reexamination, defendant No.4 found cyst, to

which, appropriate medical dressing was given and was referred to the Government Medical College Hospital, Nanded, where he was admitted from 3rd March, 2003 to 9th April, 2003. According to respondent-plaintiff, because of wrong treatment given by defendant No.4, left hand got infected and accordingly, because of gangrene, same was amputated. The said operation of amputation of left hand has rendered him disabled. As such, the suit was brought into action.

3. The present appellants filed written statement at Exhibit-13 denying the claim. According to them, a stable fracture of left radio ulna bone was noticed. According to defendants, on 28th February, 2003, the plaintiff was brought by his mother to Civil Hospital, Hingoli and after carrying out, X-ray, forearm fracture of radio ulna was detected, for which, appropriate treatment was provided viz., plaster and was put under the observation for almost five hours. The plaintiff was discharged on his request after he was under

observation for five hours. Appropriate instructions were given to the plaintiff that he should move his fingers after every ten minutes and not to remove sling. In case, swelling develops over fingers, he should immediately report to the Civil Hospital, Hingoli. According to the defendants-appellants, the plaintiff had free movements of fingers and no stretch pain was present. There was proper circulation in capillary and his body temperature was normal.

4. The trial Court, in view of above, framed issue at Exhibit-14 and answered the issue that the plaintiff got disability due to wrong treatment given by defendant No.4 in favour of the plaintiff and further observed that the plaintiff is entitled for damages and awarded compensation of Rs.2,00,000/-.

5. The lower appellate Court, reappreciated the entire issue and dismissed the appeal.

6. In the aforesaid background, Mrs. Patil, learned A.G.P. for the appellants-defendant Nos.1 to 4 would urge that the Courts below have lost sight of the fact that the treatment that was provided to the plaintiff was not doubted. What is doubted is, post treatment complications. According to her, it depends on patient to patient, how he responds to the treatment. She would then urge that the appellant No.4-Doctor, to the best of his judgment has provided treatment. According to her, the plaintiff was instructed to reconsult the said Doctor, in case of any contingency viz., pain or swelling which instructions were not followed by the respondent-plaintiff, which has resulted into this complication. According to her, there is no basis for directing payment of damages by the appellants. According to her, the appeal deserves to be consideration.

7. If the said submissions of the appellants are examined, particularly in the light of testimony of PW-2 Dr. Devendra Paliwal, Nanded,

who is examined at Exhibit-33, he has stated that the plaintiff was referred to Shri. Guru Govind Singhji Memorial Hospital and Medical College, Nanded, where he was posted by defendant No.4. According to him, the plaintiff was suffering from compartment syndrome, because of pressure on forearm. He deposed that fracture of the plaintiff to left radius ulna was plastered. According to him, in view of development of gangrene, amputation of left elbow of the plaintiff was done on 12rth March, 2003. In his cross examination, he has deposed that if the patient would not follow instructions, same may result in development of swelling on forearm, however, he was not in a position to tell whether the plaster was very tightly applied. Appellant No. 4 i.e. defendant No. 4, who provided initial treatment, viz., Dr. Bangar has stated about providing proper treatment and also medicine and he states that it is upon request of patient, he was discharged. Both the Courts below, upon analysis of the evidence, Dr.Paliwal and Dr. Bangar noticed that due to

pressure on the forearm, compartment syndrome was developed, which has resulted into gangrene.

8. Both the Courts below, as such, concurrently held that amputation of hand of the plaintiff-respondent No.1 is because of incorrect treatment and as such, rightly held that all the appellants are liable for payment of compensation.

9. The evidence of Dr. Bangar and Dr.Paliwal discloses that the patient-plaintiff, whose parents were uneducated, was discharged at the request of the patient or his parents. Dr. Bangar never informed the plaintiff that the plaintiff cannot be discharged because of his health condition and he needs to be placed under observation. Rather, defendant No. 4 has chosen to discharge the plaintiff-victim, which speaks of defendant No. 4 was trying to shirk or avoid his responsibility. It is worth to observe herein that the plaintiff has suffered permanent disability because of amputation.

10. In the backdrop of above observations, in my opinion, no case for interference, in the appellate jurisdiction, is made out. As such, second appeal fails and stands dismissed.

11. Consequently, civil application stand dismissed.

(N.W. SAMBRE, J.)

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