

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

**SECOND APPEAL NO.797 OF 2015
WITH
CIVIL APPLICATION NO.939 OF 2015**

Zilla Parishad, Solapur
through its Chief Executive Officer
And Others ... Appellants/Applicants

Versus

Shashikala Balkrishna Kshirsagar
And Others ... Respondents

.....

Mr. Anand S. Kulkarni for the Appellants/Applicants.
Mr. S.S. Shah for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATE : 28 FEBRUARY 2017

P.C. :

Heard learned Counsel for the parties.

2 This second appeal challenges a judgment and order passed by the District Judge at Solapur in Civil Appeal No.37 of 2013. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellants and confirmed the decree passed by the Trial Court in favour of Respondent No.1.

3 The subject matter of the suit is negligence on the part of the
Appellants and Respondent No.2 herein (original Defendants) in
performance of their duties while undertaking tubectomy of Respondent

No.1 (original Plaintiff). It is the Plaintiff's case that despite the tubectomy performed on her, she conceived and gave birth to a baby girl, and that after her delivery, she once again underwent a tubectomy at the hands of the Defendant doctors, despite which she once again conceived, and thereafter underwent an abortion and had to be re-operated for tubectomy. It is the case of the Plaintiff that the Defendants were negligent in performing the operations and as a result, she suffered damages.

4 Both the Courts below have by concurrent findings of fact held that the operations carried out by Defendant Nos.3 and 4 were performed negligently and that the Plaintiff suffered damages, which were quantified in the sum of Rs.1,00,000/-. No substantial questions of law arise from these concurrent findings of fact. The findings are based on evidence and not vitiated by any error of law. They cannot be said to have been arrived at on consideration of any irrelevant or non-germane material or by non-consideration of any relevant or germane material.

5 Learned Counsel for the Appellants submits that the quantum of damages is not proved by the Plaintiff. The Trial Court has distinguished between pecuniary damages in the nature of medical attendance, loss of earnings and other material loss and non-pecuniary damages, which are incapable of being assessed by arithmetical calculations, and which include damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future, loss of amenities of life, damages for loss of expectation of life, inconvenience, disappointment and mental stress. The Trial Court held that due to negligence at the hands of the Defendants, the Plaintiff was required to undergo one delivery, one

abortion and two family planning operations without any fault of hers. Though there was no proof of any particular pecuniary damages, the Plaintiff's trauma, physical suffering, inconvenience, mental stress etc. had to be compensated for. Obviously, there is no known arithmetical calculation for assessing these damages. In the premises, applying a thumb rule, the Trial Court awarded damages to the tune of Rs.1,00,000/- holding the amount to be just and proper in the facts of the case. The First Appellate Court confirmed these findings on the ground that damages awarded by the Trial Court were justified and in consonance with the suffering, trauma and mental agony suffered by the Plaintiff. These are pre- eminently possible conclusions, which cannot be said to be vitiated by any substantial error of law.

6 The second appeal is accordingly dismissed. No order as to costs.

7 In view of the dismissal of the second appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)