

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

Date of decision: 03.08.2017

RSA No.4848 of 2004

Karamjit Kaur

...Appellant

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Umesh Kumar, Advocate,
for the appellant.

Ms. Gulnoor Ghuman, AAG, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

Sterilization to make reproductive activity inert is not one hundred per cent fail safe guarantee against pregnancy. The Doctor, who conducted the sterilization operation, cannot be attributed negligence so long as he takes due care to perform the operation in the ordinary course of knowledge usually gained by a medical practitioner exercising ordinary skill of an ordinary competent man. This is in essence the Bolam's test as enunciated by Justice McNair in Bolam Vs. Friern Hospital Management Committee, (1957) 1 WLR 582 observing as follows:-

"Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A

man need not possess the highest expert skill...It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

Bolam's test has been approved by the Supreme Court in Dr. Jacob Mathew Vs. State of Punjab, AIR 2005 SC 3108.

The suit for damages as was brought by the appellant, a government employee, who bore a child after the operation, would not lie against the State or its medical doctors claiming monetary damages in the event of birth of an unwanted child born to the couple after the medical procedure was performed by consent. To bring home the case to a decree, one would need excellent evidence and strict proof of medical negligence which is wanting in this case.

See for degree of negligence and standard of care to bail out the doctor in the ruling of the Supreme Court handed down in Martin F. D'Souza Vs. Mohd. Ishfaq, AIR 2009 SC 2049.

For direct case in point on sterilization gone wrong by perception of the progenitor and right to decree of damages, *See*, State of Punjab Vs. Shiv Ram & others, (2005) 7 SCC 1.

The first Appellate Court did very well in reversing the judgment and decree of the trial Court allowing the suit. I agree with the findings recorded by the first Appellate Court that nothing is payable by the State, which judgment and decree does not give rise to any substantial question of law for consideration of this Court on the second appeal side.

Consequently, the instant appeal breathes no life into the case and is hereby dismissed with costs of suit in all the courts payable to the defendants. Decree sheet be prepared.

03.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>