

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.48 and 49 of 2018
and C.M.P.No.946 of 2018

1. The State of Tamil Nadu
rep. By its District Collector, Erode
2. The District Medical Officer,
Government Head Quarters Hospital,
Erode.
3. The Joint Director of Health Services,
Government Head Quarters Hospital,
Erode.
4. The Duty Doctor,
Government Hospital,
Anthiyur. ..Appellants/Appellants/Defendants both SA's

Vs.

A.Selvi ..Respondent /Respondent/Plaintiff both SA's

* * *

Prayer : Second Appeal No.48/2018 filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 31.07.2017, passed in A.S.No.70 of 2015 on the file of the I Additional District Judge, Erode, confirming the judgement and decree dated 12.08.2015, passed in O.S.No.301 of 2014 on the file of the Principal Subordinate Judge, Erode and SA.NO.49/2018, preferred against the judgement and decree dated 31.07.2017 passed in Cross Appeal Suit No.70/2015 on the file of the Additional District Judge, Erode.

* * *

For Appellants : Mr.Vineet Subramani
Government Pleader (CS)

C O M M O N J U D G E M E N T

The defendants in O.S.No.301 of 2014 laid challenge to the concurrent findings of the Courts below in these appeals.

2. After hearing the arguments of the learned Special Government Pleader (CS) appearing for the appellants, this Court is of the view that these appeals could be disposed of, at the admission stage itself and hence, notice need not be ordered to the respondent/plaintiff, in view of the order that this Court proposed to pass hereafter.

3. The case of the plaintiff, in a nutshell, is as follows :

(i) The plaintiff, out of the wedlock with Arthanari, a laundry coolie, has got three female children. After the birth of third female child on 18.11.1998, they decided to have the family planning operation done on her. She was operated on 20.11.1998 by the fourth appellant/fourth defendant and discharged from the hospital, a week thereafter.

(ii) When the respondent/plaintiff went to hospital on 06.11.2010 for abdomen pain and irregular menstrual cycle, it is found that she was carrying a nine month old baby, in spite of the family planing operation performed on her. Since she was at the advance stage of pregnancy, she was advised not to abort the child. The respondent/ plaintiff delivered the fourth female child on 06.02.2011.

(iii) In the said circumstances, alleging medical negligence on the part of the fourth appellant/fourth defendant, the plaintiff filed O.S.No.301 of 2014 on the file of the Principal Subordinate Court, Erode. The appellants 1 to 3/defendants 1 to 3 are the higher authorities of the fourth appellant/fourth defendant.

4. Resisting all the allegations set out in the plaint, the appellants/defendants contended that the fourth appellant/fourth defendant performed the operation properly and diligently, and there is no negligence on their part. It is contended that whatever happened beyond the control of the appellants/defendants, they cannot be held liable, and considering the fact that there is a possibility of 0.5% failure in the sterilization surgery, the government passed G.O.Ms.No.415, dated 24.07.1998 granting a sum of Rs.5,000/- to the victims, which remedy alone the respondent/plaintiff could avail of and she is not entitled to claim huge sums as compensation. Accordingly, the appellants/defendants prayed for dismissal of the suit.

5. Before the trial Court, the respondent/plaintiff got herself examined as P.W.1 and marked Exs.A.1 to A.11. The appellants/defendants examined one Dr.S.Ranjane as D.W.1 and marked Exs.B.1 and B.2.

6. Upon considering the above oral and documentary evidence, the Trial Court has decreed the suit in part and awarded a sum of Rs.1,50,000/- along with 6% interest.

7. Challenging the same, the appellants/defendants preferred A.S.No.70 of 2015 before the I Additional District Court, Erode. Aggrieved by the quantum of compensation awarded by the Trial Court, the respondent/plaintiff filed cross objections in the appeal. The lower appellate Court while upholding the judgement and decree of the Trial Court, dismissed both the appeal filed by the appellants/defendants and the cross objections filed by the respondent/plaintiff.

8. Aggrieved by the judgement of the appellate Court, the appellants/defendants filed these appeals.

9. Learned Special Government Pleader (CS), who appears for the appellants/defendants submitted that the mere fact that the surgery on the respondent/plaintiff was performed on 20.11.1998 and she delivered the fourth child only on 06.11.2010, exhibits that there is no negligence on the part of the appellants/defendants. It is submitted that the respondent/plaintiff did not follow the advice of the Doctors, as a consequence thereof, the fallopian tubes would have joined. It is also submitted that the respondent/plaintiff, as soon as knowing the conceiving could have approached the appellants/defendants for proper medical advice, instead, she had, according to them, under the fond hope of giving birth to a male child, chosen to wait till the delivery. Hence, she is estopped from maintaining the suit for compensation. In support of his submissions, learned Special Government Pleader, relied upon a judgment of the Supreme Court in State of Punjab V. Shiv Ram and others, 2005 (7) SCC 1.

10. In the above said judgement, it has been held that the basis of liability of a professional in tort is negligence. Unless that negligence is established, the primary liability cannot be fastened on the medical practitioner. Unless the primary liability is established, vicarious liability on the State cannot be imposed. In the instant case, the Courts below have held that it is only due to the medical negligence and error, the plaintiff conceived and got her fourth child, which according to them, is an unwanted pregnancy. Though it is generally stated that the sterilization is permanent, the failure rates are also on the higher side. It is stated that the failure may be due to age factor of the woman, and the effectiveness also depends on the skill of the provider. In the instant case of the plaintiff, the procedure for sterilization was successful for more than ten years and only after ten years, the plaintiff had become pregnant which went undetected till the advance stage of pregnancy. Considering the background of the

plaintiff, who is a wife of a coolie and who had already given birth to three female children and had voluntarily gone for sterilization got conceived after ten (10) years, negligence cannot be attributed either to the Doctor, who performed the procedure, or to the plaintiff for not taking the recommended precautions. The plaintiff had detected the pregnancy only during her advanced stage by which time, the same could not be terminated and she was forced to deliver the child. Even according to the medical science, there cannot be 100% guarantee for the women sterilization, as there are cases, where, even after the operation, women have become pregnant and delivered child. Hence, either the Surgeon or the employer cannot be held liable for compensation on account of, either unwanted pregnancy or unwanted child. If the conception is immediate, may be the negligence could be attributed to the surgeon, who performed the same. In such circumstances, it has to be seen whether Courts below were right in awarding compensation.

11. Admittedly, the plaintiff and her husband, who is a collie, have got three female children and they are illiterate. The appellants are not private bodies, but it is the State and their duty Doctor. The State may not be aggrieved, as there is no better service than to serve the poor and needy. The plaintiff had undergone the surgery with utmost faith in the hospital, in which, she had undergone the surgery. When her believe and faith was shaken by the unwanted pregnancy, she could not blame the appellants. The profession of a Doctor only aims at serving the humanity.

12. The plaintiff would have opted to go for sterilization only to avoid the financial crisis of the family. The State Government also encourages such kind of procedures to be taken up by the families in the middle class and the lower middle class. When, those who voluntarily opt for family planning or sterilization and to take precaution, for the consequential failure of the sterilization, the poor, illiterate and ignorant persons like the plaintiff cannot be found fault with. Considering the circumstances from which the plaintiff has knocked the doors of this Court, the background from which she comes and the fact remains that despite the surgery the plaintiff had to bear a child, at least, on humanitarian ground, award of the compensation granted by the Courts below has to be confirmed. Hence, in the interest of justice, the judgement and decree passed by the Courts below need not be interfered with and the same are confirmed and the appeal is dismissed.

13. The cross appeal filed by the plaintiff for the unawarded portion of the claim was dismissed by the lower appellate Court. However, the appellants have preferred another appeal against the same, which is also liable to be dismissed.

14. In the result, the second appeals are dismissed and the Judgments of the Courts below are confirmed. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

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Sub Asst. Registrar

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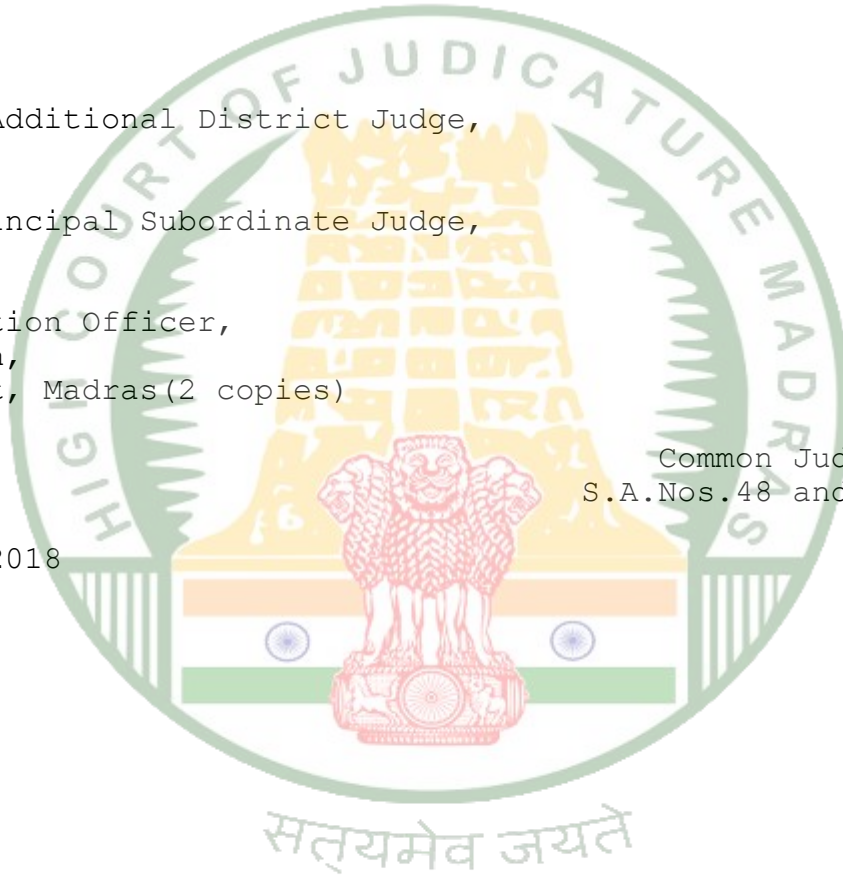
1. The I Additional District Judge,
Erode.

2. The Principal Subordinate Judge,
Erode.

3.The Section Officer,
VR Section,
High Court, Madras(2 copies)

Common Judgement in
S.A.Nos.48 and 49 of 2018

nr 10/04/2018



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