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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9499/2017**

SHANTI DEVI & ANR

..... Petitioners

Through: Ms Sija Nair Pal, Advocate.

versus

SAFDARJUNG HOSPITAL AND ORS

..... Respondents

Through: Mr Sanjoy Ghose, Advocate for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.11.2018

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

- “a. Issue a writ of Mandamus or any other appropriate writ order or direction to the Respondents to constitute a independent committee to review the incident of gross medical negligence and address these shortcomings so that poor and impoverished women receive respectful and dignified care and the life of the infant and the mother is not put at risk.
- b. Pass an order directing the Respondent No.1 to compensate the Petitioners & their family for the expenses incurred by them and the mental & financial trauma that they had to bear due to the gross medical negligence caused by the respondent No.1.
- c. Pass an order directing the Respondent No.1 to provide the Petitioners with copies of all the medical documents of the deceased infant including head ticket, death certificates etc. issue by them but not released to the

petitioners till date.

- d. pass an order directing the Respondent No.4 to provide copies of documents received by him from Respondent No.1 hospital with respect to petitioner No.1 & the deceased infant to the Petitioners and also to report to this Hon'ble Court the status of the complaint lodged by the Petitioners against the Respondent No.1 Hospital.
- e. Issue a writ of Mandamus or any other appropriate writ order directing Respondent No.2 to initiate an independent enquiry & to take appropriate action against the respective medical staff of the Respondent No.1 Hospital who declared the live infant to be dead at the first instance & deprived the deceased infant of his feeble chance of survival.”

2. Petitioner no.1 was admitted with respondent no.1 hospital on 15.06.2017 and delivered a premature fetus on 18.06.2017. The infant was born in the fifth month of the pregnancy. The fetus was declared dead and the body was handed over to petitioner no.1.

3. Petitioner no.2 (father) of the infant took home for last rites. However, found that the infant was still gasping for air. The infant was immediately bought back to respondent no.1 hospital and was put on oxygen. It is the petitioner's case that the infant, survives for 36 hours thereafter and finally expired on 4:15 PM on June 19, 2017.

4. Insofar as the petitioners prayer for seeking medical records is concerned, this Court by an order dated 02.11.2017 had directed that the same be handed over to the petitioners. Admittedly, the petitioners have received the records and the petitioner's grievance in this regard stands satisfied.

5. This Court had also directed that an independent enquiry be

conducted with regard to the allegations made in the present petition. Pursuant to the aforesaid orders, a Committee was constituted by three senior officers (Dr A. K. Gadpayle, Addl. DGHS, Dte. GHS; Smt. Gayatri Mishra, Joint Secretary (Hospital), Ministry of Home and Family Welfare; and Dr V. K. Tiwari, Medical Superintendent, Dr RML Hospital, New Delhi). The said Committee also invited four other doctors as special invitees. The Committee examined the records as provided by respondent no.1 hospital. A copy of the report has been handed over to this Court.

6. The same, *inter alia*, indicates as under:-

- “8. During conservative management, patient aborted a conceptus of 470 gms on 18.06.2017 spontaneously.
9. Abortion is the expulsion or extraction from its mother of an embryo or fetus weighing 500 gms. or less when it is not capable of independent survival (WHO). The expelled embryo or fetus is called abortus. (Annexure II). The abortus was observed for 60 mins. (which is median survival rate for abortus below 20-22 Wks.) (Annexure VII) and handed over to relatives for last rites as there were no signs of life observed during this period.”

7. The Committee also concluded as under:-

“Conclusion:

1. Technically by virtue of gestational age and weight the outcome of pregnancy in this case qualifies to be an abortus and not a ‘baby’ and did not merit proactive resuscitation
2. Resurgences of some signs of terminal gasps/flickers of movement in such an abortus on receiving some warmth is known as per expert opinion.

3. By all international/international standards no resuscitation was required in this case as the abortus at this age is not compatible with any survival.
4. Thus considering all the above points, there does not appear to be any medical negligence on the part of treating doctors and standard management guidelines have been followed.”

8. It is relevant to note that the Committee also made certain recommendations, which are set out below:-

“Recommendations:

1. There should have been more open and transparent communication with the patient about the prognosis of abortus.
2. The committee appreciates the concerns and anxiety of the parents in such cases and recommends that the treating doctors should empathize with such parents and family members.
3. In doubtful cases opinion of experts should be taken, the parents should be kept informed about decision making and abortus should be handed over to the parents after complete satisfaction of the parents regarding cessation of life.”

9. The learned counsel appearing for the petitioner states that there are certain factual discrepancies as according to the petitioner the infant did survive for 36 hours. The learned counsel appearing for the petitioner also relies on the Death Summary furnished to the petitioner, in support of the aforesaid claim.

10. This Court is of the view that since the controversy in this regard involves disputed question of facts, it would not be apposite to examine the same in this petition.

11. In view of the above, the present petition is disposed of leaving it open for the petitioners to institute an appropriate action for compensation, if so advised.

VIBHU BAKHRU, J

NOVEMBER 26, 2018
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