

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 08-3-2019

Judgment delivered on 11-04-2019

First Appeal No.182 of 2005

1. State of Chhattisgarh through Collector, Bilaspur, District Bilaspur (CG)

---- Appellant

Versus

1. Suk Lal aged about 45 years s/o. Dasai Lal Satnami, occupation Agricultural Labour.
2. Smt. Ramayan Bai, aged about 41 years, w/o. Suklal Satnami.

Both are residents of village Bamhani, P.o. Katnai, Police Station Akaltara, at present residing Chuchupara, Police Station Torwa, Tahsil and Dist. Bilaspur (CG).

---- Respondents

For Appellants/State : Shri Raghavendra Verma, Govt. Advocate.
For respondents : None though served

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against judgment and decree dated 12-4-2004 passed by the First Additional Sessions Judge, Bilaspur (CG) in Civil Suit No.8-B/2002 wherein the said Court decreed the suit filed by the respondents/plaintiffs for compensation partially to the tune of Rs.1,08,000/-.

2. As per respondents/plaintiffs, respondent No.2 Ramayan Bai got her Laparoscopic operation (Family Planning) conducted at

Primary Health Centre, Jamnipali in the month of January 1996. It is stated that a certificate was issued regarding operation on 17-1-1997. After operation the said respondent again conceived and subsequently delivered a child in the month of January, 1997. It is alleged that due to failure of her family planning operation on account of negligent of the concerned Doctor, the appellant is liable to pay compensation.

3. Learned counsel for the appellant submits as under:

- (i) There was absolutely no negligence in performing the operation but the trial Court has not appreciated the factum of negligence in its right perspective.
 - (ii) The respondents were under obligation to take proper precaution after operation, but they did not follow direction given at the time of operation for which the appellant cannot be faulted with.
 - (iii) The respondents were bound with their declaration and application which was signed by them before operation and they could not be permitted to be wriggle out the binding condition before the operation
 - (iv) The respondents have been very well informed about the failure rate of the Laparoscopic Tubectomy.
- Therefore, finding of the trial Court is liable to be set aside.

4. The first question for consideration before this Court is whether the doctor who conducted the operation of the respondent No.2 Ramayan Bai was negligent and there is failure of operation. In the matter of **State of Punjab vs. Shiv Ram & Ors.** reported in **AIR 2005 SC 3280** it is held by the Hon'ble Apex Court that compensation can be awarded only if failure of operation is attributable to negligence of the doctor. Failure due to natural causes do not provide ground for claim.

5. In the present case, from the evidence of PW/1 Suk Lal and PW/2 Ramayan Bai, it is established that PW/2 Ramayan Bai had undergone family planning in Camp organised at Primary Health Centre, Jamnipali in the year 1996 and as per version of Suklal (PW/1), his wife gave birth to a child on 9-1-1997. It means, PW/2 Ramayan Bai conceived just after the operation. As per the version of the Dr. PS Sisodia (DW-1), it is advised at the time of operation that after operation one should avoid physical relation for six months, but in the present case it appears from the evidence of PW/1 Suk Lal and Ramayan Bai (PW/2) that PW/2 Ramayan Bai conceived just after the operation that is why she gave birth to a child on 9-1-1997. It means, direction of the Doctor has not been followed by the respondents. The Doctor who performed the operation has not been made party in the suit before the trial court and he had no opportunity to explain about the operation. As per

version of Dr. P.S.Sisodia (DW/1), there is no scope of negligence in the present case on the part of operating doctor. Looking to the evidence of both sides, it is not established that operating doctor was negligent during operation.

7. The second question for consideration before this Court is whether the respondent is entitled for compensation for conceiving and giving birth of a child after operation. In the matter of State of Punjab (supra) it is held that in spite of operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. Section 3(2) , Explanation II of the Medical Termination of Pregnancy Act, 1971 provides that if the woman has suffered an unwanted pregnancy, it can be terminated and it is legal and permissible under the said Act. If they do not opt for termination, the child born to the respondent could not be said to be unwanted child. Claim in such cases cannot be sustained merely on account of child birth. In the present case the couple opts for bearing the child, it ceases to be an unwanted child and compensation for maintaining and upbringing of such a child cannot be claimed against the doctor or against the department as vicarious liability.

8. In the present case, the doctor who conducted the operation did not offer any guarantee, therefore, there is no contract on not conceiving the child, therefore, the Court would not imply of such contract because any such contract is absent. Therefore, this claim must fail. In view of this Court, the impugned judgment/decree cannot be sustainable under the law and is liable to be set aside.

9. In the result, the appeal is liable to be and is hereby allowed. Impugned judgment and decree passed by the trial Court as mentioned above is set aside.

10. Accordingly, the decree is passed in favour of the appellant and against the respondents as under:

- (i) The appeal is allowed.
- (ii) Suit filed by the respondents is dismissed with cost.
- (iii) The parties to bear cost of litigation of their own.
- (iv) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (v) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE