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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1272 of 2017**

- Smt. Ramkumari Shrivastava, W/o. Ballu Shrivastava, Aged About 36 Years, R/o. Village Newra, Tehsil Takhatpur P. S. Kota, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Principal Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. Director, Directorate Health Services, III Floor, Indrawati Bhawan, New Raipur, District Raipur Chhattisgarh
3. Commissioner, Department Of Health And Family Welfare, Third Floor Indrawati Bhawan, New Raipur Chhattisgarh
4. Superintendent, Dr. Bhimrao Ambedkar Memorial Hospital, Raipur, District Raipur Chhattisgarh
5. Dr. Vishnu Dutta, Head Of Department Radiology, Dr. Bhimrao Ambedkar Memorial Hospital, Raipur, District Raipur Chhattisgarh
6. Abdul Khalid S/o Abdul Wajid Aged About 43 Years X-Ray Technician Department Of Radiology, Dr. B.R. Ambedkar Memorial Hospital, Raipur Chhattisgarh

---- Respondents

For Petitioner Shri Anish Tiwari, Advocate

For Respondent/State Shri Rahul Jha, Government Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18/09/2019**

1. Heard.
2. The present petition is filed for the reason that the petitioner while was undergoing a treatment in the government hospital i.e. Dr. B.R. Ambedkar Memorial Hospital, Raipur had passed through a trauma of accident at hospital during M.R.I. scan due to negligence of the

hospital staff.

3. The facts as been pleaded in the nutshell is that on 09.07.2014, the petitioner was hit by a sharp tin which caused cut injury on her waist and other parts of the body. She was admitted to Narayani Multispecialty hospital at Bilaspur on 09.07.2014 and she was operated there. The petitioner had cut through and through muscles of back abdomen and lumber spine. She had deep cut from lower rib cage and cut had encircled up till upper portion. All the muscles were cut in the area and intestinal loop had come out of body. She had injury over left arm and fore-arm. Surgical repairs were done and M.R.I. spine revealed fracture of L-4 with discontinuity of finale terminale. It cause monoplegia of left lower limb and grade I power of right lower limb. She was advised for fixation of L-4 spine with repair of nerves. She was referred to specialized neuro surgical and orthopedic team and was referred to neuro surgery for further treatment.
4. Consequent upon reference for cure of injury, she was admitted to Dr. B.R. Ambedkar Memorial Government Hospital, Raipur on 18.07.2014. She was being treated their and different test were carried out, one of it was MRI test. It is pleaded that while she was subjected to MRI at Radiology department, the Head of the department was Dr. Vishnu Dutta (Respondent No. 5) who was in-charge of the MRI machine and one Abdul Khalid (Respondent No.6) was the technician of radiology department, the man was operating the MRI machine. It is stated that the petitioner was taken to MRI scanning by the staff of the hospital and as she was completely bed ridden and was unable to move. After the M.R.I. while she was taken out from machine an iron stretcher was used by the team of MRI It is contended that at the time of MRI test no metal objects are allowed because the MRI machine creates high

magnetic field and any presence of metal object may cause injury. It is further contended while the petitioner was shifted on a iron stretcher inside the MRI room by the staff, the petitioner was pulled up by the MRI machine along with stretcher and was stuck inside the machine which resulted into multiple injuries on the body. The averment of the petitioner further is that the persons who were handling the machine were not trained and the person who was in-charge also did not take care and was extreme negligent in performance of the duty. It is further stated that after the incident, the petitioner was abandoned without any proper treatment and it was when the petitioner's husband approached the Women Commission, who wrote a letter to the Chief Minister, the issue was taken care of and treatment started after intervention of the then Chief Minister. It is stated that because of such negligence during treatment, the petitioner had to pass through extreme trauma and the injury and lately she ended with 100 percent disability of lower limb and upper limb.

5. Learned counsel for the petitioner would submit the petitioner do not dispute the fact that after the initial accident of cut injury she was not in serious condition as she went through surgical intervention at Narayani Multispecialty hospital, Bilaspur and was carrying colostomy tube at her abdomen and was partially paralyzed. It is stated after admission to Dr. B.R. Ambedkar Memorial Hospital, Raipur on 18.07.2014, thereafter during her stay at hospital the incident of MRI accident happened on 08.09.2014. Thereafter, she was taken to All India Institute of Medical Science (AIIMS), New Delhi wherein the medical report would show that she was having paraplegia. By reference to medical dictionary it is contended that 'monoplegia' means 'the paralysis of one limb' whereas the 'paraplegia' means 'paralysis of the lower portion of the body including both legs'. It is contended that

because of the accident at MRI, the petitioner though was admitted with monoplegia but it turned into paraplegia and accident at MRI room was the cause. It is further stated that she was lastly discharged from AIIMS, New Delhi and the last report of disability certificate dated 14.05.2015 would show that she had 100 percent disability of left lower limb and left upper limb. Therefore, the proximity of the time in admission to Dr. B.R. Ambedkar Memorial Hospital, Raipur on 22.02.2014 and to the extent of disability which was examined on 14.05.2014, it would show that because of the accident the petitioner suffered the 100 percent disability.

6. Per contra, learned State counsel assisted by the doctors would submit that the petitioner when was admitted to the Dr. B.R. Ambedkar Memorial Hospital, Raipur was having the symptom of paraplegia in both the left and right lower limb. It is stated that on one lower limb the grade power was zero while in other had the minimum grade of power was existing, meaning thereby the paraplegia was already existing i.e. paralysis of both the legs. It is stated that the petitioner though had sustained injury for the accident during MRI on 08.09.2014, but such incident or injury had not aggravated the existing injury, so as to convert the monoplegia into paraplegia. The counsel would further submit that the petitioner since was not able to sustain any surgery as she was having a bed sore, she was provided with conservative treatment and at the time of discharge she had improved a lot and one of the lower limb had started working. He would further submit that the injury on the upper lower limb was caused for the reason that she had suffered injury on left elbow which would be evident from the narration at the time of admission to Dr. B.R. Ambedkar Memorial Hospital, Raipur under head of condition of the patient which was written on the time of admission. He further submits that during the treatment and

shifting of the petitioner to AIIMS, New Delhi the expenses were borne by the State government. Therefore, the petition has no merit and maximum benefit have been provided.

7. I have heard, the learned counsel for the parties and perused the document and also the affidavit placed on record.
8. The record shows that initially the petitioner met with an accident by cut over the back of the body by sharp tin and was admitted to Narayani Multispecialty hospital, Bilaspur on 09.07.2014. While she was admitted at Bilaspur Hospital immediately after incident she was diagnosed with monoplegia of left lower limb and grade I power of right lower limb. Subsequent discharge summary shows that surgical repair of the injury was done, as it was found that she had colon tear and colostomy was done and on MRI spine revealed fracture of body of L-4 with near complete transaction at L-4 level with discontinuity of filum terminale was present which cause monoplegia of left lower limb and grade I power on right lower limb. She was referred for L-4 spine with repair of nerves to the higher medical center. Subsequently, she was shifted to the Dr. B.R. Ambedkar Memorial Hospital, Raipur.
9. The admission to Dr. B.R. Ambedkar Memorial Hospital, Raipur was on 18.07.2014, the admission ticket of Dr. B.R. Ambedkar Memorial Hospital, Raipur records at time of admission that 0/5 power was in left lower limb and 1/5 was in right lower limb. As per the the bed head ticket she was advised for MRI test. It was this time when the petitioner was being taken out from the MRI machine on an iron stretcher the incident happened. Due to magnetic field she was pulled in the MRI machine and was stuck with the MRI machine along with the stretcher and got injuries over her head, face and other parts of the body. After the accident, the petitioner was treated at same hospital and there

after considering her condition she was flown to AIIMS, New Delhi. The petitioner contends that because of the accident which happened in the MRI room the injury aggravated and she developed complete paraplegia. The document would suggest that after the incident when she was taken to Delhi and was admitted to AIIMS, New Delhi on 13.09.2014, there in the diagnoses filed as Annexure R-2 shows that at time of admission, she was having paraplegia means 'paralysis of both the legs'. The respondent has filed the submission memo with affidavit of Doctor wherein it is stated that because of the MRI accident, the injury of the petitioner did not aggravated to worst and she had the injury of paraplegia from the earlier date itself due to initial accident. This part of the submission as to whether because of the accident in MRI room, the injury aggravated requires to be deliberated after the evidence of the experts are adduced from both sides in petitioner and respondent before the competent Court. To arrive at a finding as to whether the existing injury aggravated from monoplegia to paraplegia is required to be proved before competent Court. Such finding can be arrived at after the witnesses are examined in detail and are also cross examined. This Court in exercise of power under Article 226 of the Constitution of India cannot go into to make a roving enquiry to find out the impact of MRI accident and impact of it on existing injury. This is more so because contradictory statements have come from both the petitioner and the respondent. It appears that the petitioner may have to pass through another bout of litigation to substantiate those facts before the Court in other duly constituted case.

10. So far as the incident which happened in the MRI room is concerned that while the petitioner was being carried away on a iron stretcher and she was pulled into the machine and was stuck with machine is

not in dispute. This fact can not be given go-by at the time of examination, the petitioner was carrying the severe abdominal injury with bowel prolapse and spinal injury resulting into monoplegia or paraplegia. It is also admitted the patient had large bed sore and was under advise to have bed sore care and colostomy care. The nature of injury the petitioner was carrying would show that she was already under going great trauma and pain for past many days. After the MRI test when the petitioner was removed on a iron stretcher she got stuck with machine for considerable time. Therefore, it show severe negligence had occurred while the petitioner was taken out from MRI. It is but excepted that if certain precautionary condition or restrictions are required to be followed that one should not be taken on an iron stretcher during MRI or any other restriction then that course has to be strictly followed and cannot be casually be neglected as at time it may take away the life of some one. Admittedly, for the negligence of the hospital staff the petitioner suffered additional injuries and passed through the trauma and had to be shifted to AIIMS, New Delhi where from she was eventually discharged. The hospital cannot be made a story book where nobody can be held responsible for any such act committed.

11. The Supreme Court in respect of providing the medical aid and the medical negligence case in *Balram Prasad Vs. Kunal Saha and Others in (2014) 1 SCC 384* has taken a serious view and observed that number of medical negligence cases against doctors, hospitals etc are increasing day by day. The Court in case of *Paschim Banga Khet Mazdoor Samity V. State of W.B. reported in (1996) 4 SCC 37* has already pronounced that right to health of a citizen is a fundamental right guaranteed under Article 21 of the Constitution of India. It was held that all the government hospitals, nursing homes and polyclinics

are liable to provide best treatment to best of their capacity to all the patients.

12. The facts in the instant case would suggest that the petitioner who was seriously ill and was admitted to the hospital aggravated her agony due to the incident happened. The reply of the State would show that because of the negligence attitude of the concern employee X-ray Technician another staff i.e. radiographer and one doctor Assistant Professor another Doctor resident medical Officer the incident happened and they were found negligent and departmental action were taken against them. As such negligence of the staff is admitted. It is obvious that a patient who is admitted to the hospital with such injury do not come with a mind frame to undergo further trauma but the expects that one will get cured. The documents would suggest that after the incident happened on 08.09.2014, the petitioner was shifted to AIIMS for better treatment at New Delhi wherein after treatment improvement was shown. The state administration had has given all the logistic support but the trauma which has been caused both mental and physical which happened at Dr. B.R. Ambedkar Memorial Hospital, Raipur hospital cannot be shelved. The apex Court had laid down in the case that the petitioner irrespective of social, cultural and economical background are entitled to be treated with dignity which not only forms their fundamental right. Despite repeated pronouncement by the Courts and given a reminder to those hospitals and other nursing homes and connected establishments, few of the persons still do not take their responsibility seriously. As a result, the incident of like nature happens.

13. In the facts leaving apart the issue as to whether the incident occurred at MRI room had caused permanent injury or not the facts established

in this Case would show that the petitioner suffered further trauma while she was treated at the hospital. The patient in a hospital is admitted for cure and not to undergo additional mental and physical trauma. The State can't be allowed to choose to remain in denial mode about seriousness and the carelessness would always have a price. The Supreme Court in case of *Union Of India Vs. Prabhakarn Vijaya Kumar reported in (2008) 9 Supreme Court Cases 527* has held that strict liability is not subject to any of the expectations to the rule in *Rylands V. Fletcher (1861-73) All ER Rep 1*. It further held that the principle will also apply to statutory authorities, public corporations or local bodies which may be social utility undertakings which are working for social utility and not working for private profit. It further held that strict liability has no element of moral censure. It is held that because of public bodies benefit the community on that basis it would be unfair to leave the result of a non-negligent accident to lie fortuitously on a particular person rather than to spread it among the community generally. It further held that various principal of strict liability is provided to give insurance against death and injuries irrespective fault. Apart from the strict liability in this case the negligence have been precipitated by State by the staff of the hospital. Therefore, taking into the fact the nature of the trauma which the petitioner passed through and the condition that she is presently shown to be 100 per cent disabled for the incident occurred, in the opinion of the Court for the incident happened at the hospital an amount of Rs. 5 lakhs, would suffice to compensate the petitioner who underwent the stretched trauma because of the negligence of the hospital staff. Therefore, it is directed that the respondent/ State shall pay an amount of Rs. 5 Lakhs, to the petitioner within a further period of 60 days from today.

14. The court is thankful to Dr. Lavlesh Rathore, Neurosurgeon Dr. Rakesh Sahu, Orthopedician and Dr. Anil Baghel, Officer-In-Charge for their assistance to the Court in fair discharge of the case.
15. In view of the above, the petition stands allowed to the extent indicated above.

**Sd/-
(Goutam Bhaduri)
Judge**

Jyoti