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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 571 OF 2016

Primary Health Centre and others

.....Appellants

V/s.

Geeta Ashok Patil and another

.....Respondents

Mr. S. R. Nargolkar a/w Mr. Arjun Kadam for appellants
Mr. Umesh Pawar i/b Mr. Prashant Bhavake for respondent no. 1
Mr. Saurabh V. Patil for respondent no. 2

CORAM : NTIN W. SAMBRE, J.

DATE : DECEMBER 19, 2019.

P.C.

This appeal is by original defendant nos. 1 & 2. Special Civil Suit No. 121 of 2002 came to be initiated by respondent no. 1- original plaintiff for compensation of Rs. 4 Lakhs which was partly decreed vide Judgment and Order dated 20/11/2006. The said Judgment and Order came to be confirmed in appeal preferred by present appellants being R.C.A. No. 516 of 2012 vide Judgment and Order dated 27/02/2015. As such, this Second Appeal.

2 The suit in question came to be initiated by respondent-plaintiff alleging that the family planning operation performed pursuant to policy of the appellant failed as the defendant carried pregnancy thereafter.

3 Heard learned counsel for the appellant Shri. Narggolkar. The question which he has tried to agitate before this Court is, 'Whether the appellant is duty bound to pay compensation as ordered when there is no statutory liability to that effect?'

4 Heard at length.

5 My attention is invited to various documents which were exhibited before the Court below so as to claim that there is no corresponding duty on the appellant to pay compensation. A support is also drawn from the oral and documentary evidence placed on record.

6 Learned counsel for respondent no. 1-original plaintiff

supported the Judgment and sought dismissal.

7 Before the sterilization operation performed under the supervision of the appellant, plaintiff was blessed with three children. Appellant performed operation on 20/04/2000 at Pearl Hospital, Kolhapur. Appellant issued certificate regarding successful completion of sterilization operation under the National Family Programme, a fact which is not disputed by the appellant.

8 Plaintiff, after the aforesaid operation, again carried pregnancy as was discovered in January 2002. Alleging negligence in performing family planning operation, the suit claim was brought in action.

9 The right fallopian tube of the plaintiff was left untouched as is apparent from the medical evidence brought on record. The surgery report Exhibit 49 speaks of the said right side fallopian tube was not seen because of adhesion whereas left side tube was applied double band. The said evidence prevailed before the both the Courts below

to award compensation, considering the negligence on the part of agency/doctors who performed family planning surgery for appellant.

As such, Courts below rightly held appellants principally liable to pay the compensation.

10 Findings recorded by both the Courts below awarding compensation are based on oral and documentary evidence, and law laid down by the Apex Court in the matter of **State of Haryana and Ors. Vs. Smt. Santra**¹. The appeal is also preferred against concurrent findings.

11 In the aforesaid background, no case for interference is made out. Appeal fails, stands dismissed.

[NITIN W. SAMBRE, J.]

¹ [2000(4) ALLMR (SC) 247]