

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2019

PRONOUNCED ON : 07.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.464 of 2011

1. The District Collector,
having Office at Collectorate,
Salem-636 001.
2. Dean,
Mohan Kumarmangalam Medical
College Hospital, Salem.
3. Dr. Vasuki,
Near Judge Road,
Kannankurichi Post, Salem-8
4. Dr. Alagammal,
89, State Bank Colony,
Trichy Road, Namakkal.
5. The Joint Director of Health Services
Government Head Quarters Hospital,
Namakkal.Appellants/Defendants

Vs.

1. Ashokan
2. Susila
3. BalasubramaniRespondents/Plaintiffs

Prayer: First Appeal filed under Order 41 Rule 1 of CPC r/w Section 96 of Civil Procedure Code, against the judgment and decree of the Additional District Court, FTC-1, Salem in O.S.No.29 of 2005 dated 02.12.2008.

For Appellants : Mr.J. Balagopal
Spl. Government Pleader (CS)

For Respondents : Mr. P. Jagadeesan for R1 to R3.

JUDGMENT

Aggrieved over the judgment and decree dated 2.12.2008 passed in O.S.No.29 of 2005 on the file of the Additional District Judge, Fast Track Court-I, Salem, the defendants have preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for compensation.

4. The case of the plaintiffs, in brief, is that the first appellant is the husband of Mayili @ Mariamma and their marriage took place during November 1984 and the first plaintiff and his wife were poor coolies and with much difficulty had been running their family and the first plaintiff's wife Mayili became pregnant and admitted in the Government Hospital, Namakkal for delivery and gave birth to the second plaintiff on 24.11.1985 and again the first plaintiff's wife became pregnant and was advised by the lady organizers to get admitted in the Government Hospital, Namakkal and undergo family planning operation and the organizers of the fifth defendant issued a green card and admitted Mayili in the Government Hospital, Namakkal, on 04.07.1988 and the third plaintiff was born on 04.07.1988 and the first plaintiff's wife was in the hospital till 10.07.1988 for undergoing family planning operation. The fourth defendant performed the family planning operation and Mayili was discharged with an undertaking that she would not conceive later. Thereafter, the first plaintiff and his wife settled at Salem and despite the family planning operation, Mayili got conceived again and she was admitted in Mohan Kumaramangalam Medical College Hospital on 16.06.2003 for delivery and no one attended her till 18.06.2003 and the staff nurse never cared for her and no steps to perform the operation were taken despite there being no symptoms of normal delivery. The first plaintiff was informed by the nurse that his wife had died and directed him to take the body and due to ignorance, the first plaintiff took the body of his wife without being aware of the complications that arose in the hospital and reported the matter to the local MLA and through him reported the same to the dean and as per the directions, the postmortem was conducted and the report was preferred to the Kannankurichi police and the police had registered a case under Section 174 of CrPc. in Crime No.401 of 2003 and failed to proceed further. Only on account of the dereliction of duty committed by the defendants 4 and 5 and the other staff who did the operation and as the third defendant was negligent in her duty and failed to treat Mayili properly, the same resulted in the death of Mayili and the defendants are responsible for the same and bound to compensate the plaintiffs due to the loss of Mayili. The first plaintiff had lost his consortium and love and affection and the plaintiffs estimated the compensation at the rate of Rs.15,00,000/- and the first plaintiff gave report to the commissioner of police on 03.05.2004 and another report to the District Collector on 07.07.2003. However, they failed to take any action to pay the

compensation and hence, according the plaintiffs, the need for the suit for appropriate reliefs.

5. The defendants resisted the plaintiffs' case contending that they are unaware of the pleas put forth by the plaintiffs in para Nos. 3 to 5 of the plaint and according to them, Mayili was not admitted by the third defendant on 16.06.2003 for the delivery purpose and the admission of Mayili was done by the first unit in the antenatal ward and from 16.06.2003 to 17.06.2003, the labour duty was not done by the third defendant and the third defendant is not responsible for rash, negligent and improper treatment of Mayili. Further put forth the case that Mayili had been admitted in the hospital with the history of nine month Ananorrohoea pregnancy by third time and she had conceived after post partum sterilisation and admitted for delivery on 16.06.2003 and the third defendant had put her on antibiotic and constant observation every two hours and on 18.06.2003 at about 7.15 PM Mayili complained of severe chest pain and breathlessness and she was immediately attended to and given emergency treatment, despite the same, died due to pulmonary Embolism and disputed the case of the plaintiffs that the nurse had informed the first plaintiff to take her body and the first plaintiff had taken her body without knowing the consequences of the same and reported the matter to the local MLA and subsequently the matter was reported to the dean. Further contended that the medico legal case alleged by the first plaintiff is a self serving one and contended that the defendants are not liable to pay any compensation on account of the death of Mayili and the compensation claimed is excessive and there is no negligence on the part of the defendants in performing the operation of Mayili. The reports said to have been given to the police commissioner and the District Collector are self serving documents and there is no cause of action for the suit and the suit is, therefore, liable to be dismissed.

6. On the basis of the above pleas set out by the parties, the following issues were framed by the trial court for consideration.

1. Whether the deceased Mayili @ Mariammal had sustained pain and consequent death due to the negligence on defendants 3 and 4 ?
2. Whether the defendants 1 to 5 are liable to pay the compensation to the plaintiff?
3. Whether the plaintiffs are entitled to claim the compensation as prayed for?
4. To what relief the plaintiffs are entitled to?

7. In support of the plaintiffs' case, P.W.1 was examined and Exs.A1 to A27 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Ex.B1 was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiffs by directing the defendants to pay a sum of Rs.3,75,000/- as compensation with interest at the rate of 6% per annum from the date of the suit till the date of realization. Impugning the same, the present first appeal has been preferred by the defendants.

9. The following points arise for determination in the first appeal.

1. Whether the first plaintiff's wife Mayili had sustained death due to the negligence committed by the defendants as alleged in the plaint?
2. Whether the plaintiffs are entitled to claim compensation from the defendants as prayed for?
3. To what relief the plaintiffs are entitled to?
4. To what relief the defendants/appellants are entitled to?

Point Nos. 1 & 2

10. The suit has been laid by the plaintiffs seeking compensation on account of the death of the first plaintiff's wife and the mother of the plaintiffs 2 and 3. From the materials placed on record, it is found that the first plaintiff is married to one Mayili and out of the wed lock, the plaintiffs 2 and 3 were born. It is further noted and also not in dispute that after the birth of the third plaintiff, Mayili, the first plaintiff's wife, had underwent family planning operation at Namakkal hospital and therefore, it is evident that she had been rest assured that she would not conceive again. However, it is found that nearly 15 years thereafter, Mayili again got conceived and it is found that at the advanced stage of pregnancy, she had been admitted in Mohan Kumaramangalam Medical College Hospital, Salem on 16.06.2003. Now according to the plaintiffs, Mayili had not been given proper treatment at the Salem hospital and despite she developing no symptoms of normal delivery, the doctors who had attended on her, namely, the defendants 3 and 4, had failed to give proper treatment to her and consequently, according to the plaintiffs, due to the failure and negligence in providing proper treatment and care to Mayili, she had sustained death and the first plaintiff had been directed to take her body to his house and due to his ignorance,

the first plaintiff had also taken her body to the house and only thereafter, he had chosen to report the matter to the local MLA and through him, proceeded to approach the medical authorities to ascertain the cause of the death of his wife Mayili and found that his wife had died due to the negligence committed by the defendants in toto and accordingly seeking compensation of Rs.15,00,000/-, the plaintiffs had levied the suit against the defendants.

11. The defendants resisted the plaintiffs' suit contending that though admitting that Mayili had been admitted in the hospital on 16.06.2003 at the advanced stage of pregnancy, put forth the case that, she had been provided proper treatment continuously and on account of the complications developed by her, particularly, due to cardio respiratory arrest which resulted in pulmonary embolism, she had died. Therefore, according to the defendants, they are not responsible for the death of Mayili and she had died due to the abovesaid factors and therefore, disputed the claim of compensation from them as projected by the plaintiffs.

12. From the materials placed on record, it is found that Mayili had been admitted in Salem hospital at the advanced stage of pregnancy and at that time when she was nine months pregnant. Her earlier deliveries were normal. It is found that despite the sterilisation operation done on her during 1988, she had again conceived 15 years thereafter and the fact remains that the first plaintiff had not sought for the termination of the pregnancy at the earliest point of time. As above pointed out, only at the advanced stage of pregnancy, when she was nine months pregnant, got admitted in the hospital. In such view of the matter, now according to the plaintiffs, Mayili sustained death only due to the improper and careless treatment provided by the hospital authorities and therefore, the defendants are liable to pay the compensation as claimed by the plaintiffs. Per contra, the defendants would put forth the case that Mayili had been provided with proper treatment and in this connection, mainly relied upon the medical report of Mayili marked as Ex.B1.

13. As above pointed out, the plaintiffs hail from a coolie family, therefore, they may not be aware of the procedures adopted in the hospital with reference to the treatment provided to the ladies who had conceived despite the sterilisation operation. Accordingly, when Mayili had been admitted in the hospital at the advanced stage of pregnancy, it is found that necessary and proper care should have been provided to her to ensure that her delivery is done either normally or by the other modes. In this connection, from the evidence adduced by the doctor who had attended Mayili, namely, the third defendant, examined as D.W.1, it is found that she has admitted during the

course of cross examination that she is unable to detect as to in which part of the body the cardio arrest had been caused and she was unable to detect the same prior to the cardiac arrest and further would also admit that in such conditions, the patient would be normally taken to ICU, however, the deceased Mayili had not been taken to the ICU or to the emergency unit for treatment. On the other hand, she had been provided treatment only in the general ward and not taken to the ICU and considering the abovesaid evidence of D.W.1, when it is found that the deceased Mayili had developed certain complications, particularly, with reference to the cardiac arrest, in such view of the matter, atleast determining the extent of cardiac arrest, the doctor who had attended on her, namely, D.W.1, should have taken necessary steps to admit the deceased Mayili in the ICU and ensure her treatment through the competent doctors and on the other hand, despite the position being above, when the deceased Mayili had not been taken to the ICU and only provided treatment in the normal ward, it is found that the element of negligence is noticed on the part of the doctor who had attended on the deceased Mayili. Had she taken necessary care and caution to admit the deceased Mayili at the ICU at the earliest point of time, on noting the developments of complications in her body, definitely there is a chance of rescuing her from the problems suffered by her and save the patient or atleast save the baby. On the other hand, it is found that on account of the failure of the duty doctor, namely, the third defendant, in not admitting the deceased Mayili at ICU and provide necessary treatment and on the other hand, she had been treated in the normal ward, the deceased Mayili sustained death. The abovesaid factors cannot be brushed aside and therefore, the case of the plaintiffs that the deceased Mayili sustained death due to the negligence of the duty doctor, as put forth in the plaint, cannot be easily brushed aside.

14. Furthermore, considering the evidence of D.W.1, when it is found that the case in question is a medico legal case and when in such matters, the postmortem is essential and on the other hand, when the postmortem of the deceased Mayili had not been done in the normal course and also no request has been sent to the medical officer in charge with reference to the same and when D.W.1 claimed that she is competent to discharge the body without performing the postmortem, however, when with reference to the same, there is no material projected on the part of the defendants, in such view of the matter, the case projected by the plaintiffs that the deceased body had been entrusted to the first plaintiff on her death directing him to take the body to his house without providing reasons thereof, cannot be easily brushed aside and therefore, it is found that the first plaintiff being a coolie and ignorant of the medical treatment, accordingly, is found to have taken the body. Only thereafter,

after reporting the matter to the local MLA, the first plaintiff had taken further steps to ascertain the death of the deceased. If really the deceased Mayili had sustained natural death, the case would not have come under the category of medico legal case as admitted by D.W.1. As to why no further action had been taken to perform her postmortem, no proper explanation is forthcoming. The obvious conclusion one could arrive at is that the duty doctor as well as the staff had endeavoured to conceal certain factors pertaining to the death of the deceased Mayili and accordingly suppressing same, had directed / forced the first plaintiff to take her body to his house without performing the postmortem and therefore, when there is a cloud of suspicion as regards the cause of death of Mayili and when the same had not been disclosed to the first plaintiff at the time of entrusting the body, particularly, the postmortem having not been done at the earliest point of time, the defendants are found to be hiding certain essential facts with a view to conceal the truth from the first plaintiff, in particular, as regards the death of Mayili. Therefore, the abovesaid evidence adduced by D.W.1 also would only probabalise the case of the plaintiffs that the death of the deceased is not normal as sought to be projected by the defendants and on the other hand, surrounded with certain suspicions and accordingly only with a view to conceal the same, they had not even endeavoured to perform the postmortem examination and endeavoured to dispose of the body by directing the first plaintiff to take it to his house.

15. Further considering the evidence of the postmortem doctor examined as D.W.2, when according to the defendants, the deceased Mayili had died due to Pulmonary embolism, which according to them is due to the result of cardiac respiratory arrest and when with reference to the same, D.W.2 would admit that if the patient had been admitted at the earliest point of time, there is every possibility of detecting the cardiac arrest and also admitted that the cardiac arrest had acquired 20 minutes prior to her death and there is a possibility of the doctor who had attended on her to know about the same and considering his evidence adverting to the evidence adduced by D.W.1, the duty doctor, when it is seen that D.W.1, despite gaining knowledge about the complications developed by the deceased Mayili, had failed to take her to ICU and on the other hand, proceeded to give treatment only in the normal ward, all put together would only lead to the irresistible conclusion, as put forth by the plaintiffs, that the deceased has not been provided with proper and careful treatment and particularly when she had been admitted at the advanced stage of pregnancy coupled with the factor that she has developed the pregnancy after the sterilisation operation. In addition to that, the postmortem doctor D.W.2 has also admitted that if he had been the doctor,

he would have anticipated such cardiac arrest before the delivery and therefore when the detection of cardiac arrest prior to the delivery could be detected as per the admission made by D.W.2, in such view of the matter, if Mayili had been carefully given treatment as contended by the plaintiffs' counsel, the possibility of her developing cardiac arrest could have been detected at the earliest point of time and the same could have been avoided by providing proper treatment at the ICU and when the same had not been provided to the deceased Mayili, as above pointed out, in such view of the matter, the preponderance of probabilities projected in the matter would only go to disclose that the deceased Mayili had sustained death due to improper and poor treatment provided at Salem hospital by the doctors who had attended on her and the allied staff and in such view of the matter, the conclusion of the trial court that the deceased Mayili had sustained death due to the negligence committed by the defendants cannot be easily brushed aside.

16. Considering the materials placed on record in toto when the best persons who could speak about the death of Mayili would be the doctors who had attended on her and when considering the evidence of D.W.1, the duty doctor as well as the postmortem doctor examined as D.W.2, as above pointed out, in all, it is found that had the deceased Mayili been given careful and proper treatment, her death could have been avoided and on the other hand, her death seems to have been resulted by not providing proper and careful treatment despite the possibility of the detection of cardiac arrest at the earliest point of time and in all, I hold that the deceased Mayili had died due to the negligence and carelessness committed by the doctors.

17. The Government Pleader appearing for the defendants, in support of his contentions, placed reliance upon the decision reported in 2005 (4) CTC 627 (State of Punjab vs. Shiv Ram and others). The present case has been laid by the plaintiffs only seeking compensation on account of poor and improper treatment provided to the deceased Mayili. The case relied upon by the Government Pleader is with reference to the claim of compensation for the birth of an unwanted child despite the sterilisation operation. The abovesaid decision could be distinguished when it is found that the plaintiffs have not claimed compensation due to the pregnancy of the deceased Mayili despite the sterilisation operation. Therefore, on the factual matrix, the abovesaid decision is not found to be applicable to the case at hand.

18. The plaintiffs had claimed a sum of Rs.15,00,000/- as compensation. However, the trial court, taking into

consideration the family back ground of the plaintiffs and the loss sustained by them due to the loss Mayili and the loss of love and affection and consortium sustained by the plaintiffs in toto, determined the compensation in a sum of Rs.3,75,000/- and the same is found to be not excessive and on the other hand, the compensation determined by the trial court is found to be just and proper. Hence, I hold that the compensation fixed by the trial court in favour of the plaintiffs in a sum of Rs.3,75,000/- needs no interference.

19. In the light of the above discussions, the point numbers 1 and 2 are accordingly answered in favour of the plaintiffs and against the defendants.

Point Nos. 3 and 4

20. For the reasons aforesaid, the judgment and decree dated 2.12.2008 passed in O.S.No.29 of 2005 on the file of the Additional District Judge, Fast Track Court-I, Salem, are confirmed. Resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Fast Track Court-I,
Salem.

Copy to

The Section officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate Sr.92966
+1cc to the Government Pleader Sr.92194

A.S.No.464 of 2011

ssi[co]
srg 18/12/2020