

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.795 of 2007

and

M.P. Nos.1 of 2007 and 1 of 2010

1. The State of Tamil Nadu
rep. by the Collector,
Cuddalore District,
Cuddalore.
2. The State of Tamil Nadu
rep. by the Director of Medical Services,
Chennai. Appellants/1&2
Respondents/1&2 Defendants
- Vs
1. Nagarajan
2. Minor Gnanasundari
3. Minor Gunasekaran
Minors are represented by their father
the first appellant. Respondents 1 to 3/Appellants
1 to 3/1 to 3 Plaintiffs
4. Dr.Soundaram
5. Dr.Thamizharasi Respondents 4 &
5/Respondents 3 & 4/Defendants 3 & 4

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 30.12.2005 made in A.S. No.68 of 2005 on the file of Principal District Judge, Cuddalore insofar as reversing the judgment and decree dated 13.10.2003 made in O.S. No.379 of 2000 on the file of the Additional Subordinate Judge, Vridhachalam.

For appellants : Mr.A. Dev Narendiran

For respondents: Mr.C.A. Anburajan for R4 & R5
Mr.S.T. Bharath Gowtham
for R1 to R3

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree dated 30.12.2005 passed by the Principal District Judge, Cuddalore in A.S.No.68 of 2005 reversing the judgment and decree dated 13.10.2003 passed by the Additional Subordinate Judge, Virudhachalam in O.S. No.379 of 2000.

Brief facts of the leading of the Second Appeal :

2.The appellants are the defendants 1 and 2 in the suit O.S. No.379 of 2000 on the file of the Additional Subordinate Judge, Virudhachalam and the respondents 1 to 3 are the plaintiffs and 4th and 5th respondents are defendants 3 and 4 in the suit.

3.For the purpose of convenience, the parties are described as per their ranking before the Trial Court.

4.The plaintiffs filed the suit O.S. No.379 of 2000 on the file of Additional Subordinate Court, Virudhachalam against the defendants seeking a compensation of Rs.1,75,000/- for the death caused to Anjalai, the wife of the 1st plaintiff and the mother of the 2nd and 3rd plaintiffs on account of the medical negligence committed by the defendants 3 and 4 while the deceased was admitted in the Government Hospital, Virudhachalam for Sterilisation.

5.It is the case of the plaintiff that the deceased Anjalai is the wife of the 1st plaintiff and the mother of the plaintiffs 2 and 3. According to plaintiffs, Anjalai was admitted in the Government Hospital, Virudhachalam for Sterilisation operation on 20.06.1995. The defendants 3 and 4 performed the Sterilisation operation on her. While she was in the hospital on 22.06.1995, she experienced severe pain and started crying. However no proper treatment was given to her so as to alleviate her sufferings. According to the plaintiffs on 22.06.1995, Anjalai was put on I.V. However, she died on the same day itself. According to the plaintiffs only due to the medical negligence committed by the defendants 3 & 4, death occurred to Anjalai. It is also the case of the plaintiffs that the apparatus used for operating Anjalai and the atmosphere in the hospital were all in unhygienic condition and that alone led to her death. It is also their case that while she was admitted in the hospital, she was hale and health and only due to the medical negligence, she died.

6.The third defendant filed the written statement in the suit, which was adopted by the defendants 1,2 and 4. They have denied all the allegations contained in the plaint. According to them, Anjalai approached the hospital on 18.06.1995 for undergoing Sterilisation operation and 12 days anterior to it, she delivered twin children in her house itself. According to the defendants, Doctor Sabanayagam examined her on 18.06.1995 and assessed her as a person fit for Sterilisation operation. According to them, Penicillin injuction was given to her and after operation Ampicillin and Plagyl Tablets were administered on her. On 20.06.1995, Anjalai was in good condition and she never complained of any inconvenience. According to the defendants, Malliga, the staff nurse looked after her properly and at the appropriate time Anjalai was given medicine and there was no pain for her.

7.It is the further case of the defendants that since Anjalai delivered twin children in the house itself, she was afflicted with Bacteria / Virus and only due to the said reason, she died. It is also stated in the written statement that there was no unhygienic condition in the hospital. It is also the case of the defendants that 13 others were also operated on the same day on which Anjalai was operated and those persons went home in healthy condition. It is the case of the defendants that Anjalai was given Antibiotic, despite that she died. Further, it is stated by the defendants that the first plaintiff was given Rs.10,000/- for the death of Anjalai and without any demur or objection, he received the said amount. A categorical stand has been taken by the defendants that they are not responsible for paying compensation as prayed for by the plaintiffs.

8.The Trial Court after framing of issues and after trial dismissed the suit filed by the plaintiff on the ground that without any demur, the first plaintiff has received a sum of Rs.10,000/- from the defendants as compensation for the death of Anjalai and therefore, the plaintiffs are not entitled for any further compensation.

9.Aggrrieved by the judgment and decree dated 13.10.2003 passed by the Trial Court in O.S. No.379 of 2000, the plaintiffs preferred an appeal before the District Court, Cuddalore in A.S. No.68 of 2005.

10.By judgment and decree dated 30.12.2005, the Lower Appellate Court reversed the findings of the Trial Court by allowing the appeal filed by the plaintiffs and decreed the suit as prayed for by the plaintiffs.

11. Aggrieved by the judgment and decree dated 30.12.2005 passed in A.S. No.68 of 2005, this Second Appeal has been filed by the defendants in the suit.

12. Heard Mr.A.Dev Narendiran, learned Government Advocate for the appellants and Mr.S.T. Bharath Gowtham, learned counsel for the respondents 1 to 3 and Mr.C.A. Anburajan, learned counsel for the 4th and 5th respondents.

Discussion :

13. As seen from the plaint averments, it is the categorical stand of the plaintiffs that only due to the medical negligence committed by the 4th and 5th respondents who are Doctors working with the appellants, Anjalai, the wife of the first plaintiff and the mother of the second and third plaintiffs died after the Sterilisation operation was performed on her. DW1, Dr.Soundaram, who is the 3rd defendant in the suit, who conducted the operation on Anjalai with the assistance of DW2, the 4th defendant has admitted that Anjalai was having a sound health, while she was admitted in the hospital for Sterilisation operation. It is also admitted by DW1 and DW2 that Anjalai was not afflicted with any Bacteria or Virus at the time of her admission in the hospital for Sterilisation operation.

14. It is the case of the defendants that the death of Anjalai was due to the fact that 14 days prior to her death she was afflicted with Bacteria / Virus at her home itself when she delivered twin babies. However, the evidence of DW1 and DW2 Doctors are contrary to the said pleadings as that have admitted categorically that Anjalai was not afflicted with Bacteria / Virus and she was having a good health at the time of her admission into the hospital for Sterilisation operation.

15. The Trial Court by total non application of mind has not considered the admission made by DW1 and DW2 Doctors regarding the sound health condition of Anjalai, when she was admitted in the hospital. The Trial Court has dismissed the suit merely on the ground that the first plaintiff, who is the husband of Anjalai received Rs.10,000/- as compensation from the Government for the death of Anjalai during her admission at the Government Hospital for Sterilisation operation. Within 3 days from the date of the Sterilisation operation performed by the Doctor (DW1), Anjalai died. When it has been admitted by the Doctor who performed the operation that Anjalai was admitted into the Hospital in a healthy condition, it can be conclusively inferred that she would have died only due

to the medical negligence of the Doctors, who performed the Sterilisation operation on her. There is no necessity for any further documentary evidence to establish that only due to the medical negligence of the Doctors, Anjalai died as the admission made by DW1 and DW2 is sufficient to prove the case of the plaintiffs. The sum of Rs.10,000/- was an ex-gratia payment made by the Government to the 1st plaintiff for the death of Anjalai, pursuant to the Government Order(G.O.), which enables payment of compensation if a patient dies while in the hospital. The payment of the compensation of Rs.10,000/- being an ex-gratia payment cannot be a ground for dis-entitling the plaintiff to seek additional compensation for the death of Anjalai.

16.The lower Appellate Court has rightly taken into the consideration all these factors and the evidence available on record and only thereafter has come to the conclusion that the plaintiffs are entitled to a decree as prayed for in the suit.

17.The appellants have raised the following substantial questions of law while filing the Second Appeal :

- a) Is not the suit barred by the law of limitation?
- b) Whether the respondents have given proper notice to the appellants as contemplated under Sec.80 of Civil Procedure Code?

18.Ex.A1 is the notice dated 29.03.1997 issued by the plaintiffs to the defendants claiming compensation and it was dispatched on 29.03.1997 and the suit inform a pauperis was presented on 04.07.1997, i.e. 60 days after the notice contemplated under Section 80 of CPC. In paragraph No.8 of the plaint, it is also stated that the cause of action arose on 23.06.1995, the date of death of Anjalai and the inform a pauperis suit was presented on 04.08.1997 within 3 years from the date of occurrence. Article 83 of the Limitation Act will not apply to the case on hand as it deals with suit filed by third parties against the legal representatives, administrators, executors etc of deceased persons. The case on hand is not one of such cases. Hence, Article 83 of the Limitation Act which prescribes 2 years limitation period will not apply. The lower appellate court considered the legal issues raised by the Appellant and has rightly held that Section 80 CPC has been duly complied with and the suit is well within the period of limitation.

19.This Court has perused and examined the judgment and decree passed by the Lower Appellate Court on 30.12.2005 in A.S. No.68 of 2005 and does not find any infirmity in the same. The Substantial questions of law raised by the appellants in this Second Appeal does not does not deserve any merit and it has to be summarily rejected. Accordingly, the Second Appeal is dismissed by confirming the Judgment and decree dated 30.12.2005 passed by the learned Principal District Judge, Cuddalore in A.S. No.68 of 2005. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Principal District Judge, Cuddalore.
2. The Additional Sub Judge, Vridhachalam.

Copy to:
The Section Officer,
VR Section, High Court,
Madras-104.

S.A. No.795 of 2007

MR(CO)
CB(28/08/2020)

सत्यमेव जयते

WEB COPY