

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.11.2018

PRONOUNCED ON: 04.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.988 of 2007

&

MP.No.1 of 2007

- 1.The District Family Planning Officer,
Salem-636 001.
 - 2.The District Collector,
Salem-1.
 - 3.The Medical Officer, Government Hospital,
Mettur Dam-1.
 - 4.The Revenue Divisional Officer,
Mettur Dam-1 .. Appellants/defendants
- Vs.
- Mani .. Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 06.10.2005 passed in A.S.No.21 of 2005 on the file of the Subordinate Court, Mettur confirming the judgment and decree dated 08.11.2004 passed in O.S.No.247 of 2004 on the file of the District Munsif Court, Mettur.

For Appellant : Mr.A.Dev Narendar
Government Advocate

For Respondent : No appearance

J U D G M E N T

This Second Appeal has been filed by the appellants/defendants against the judgment and decree passed by the learned Subordinate Judge, Mettur in A.S.No.21 of 2005 dated 06.10.2005. The sole respondent herein has filed a suit in O.S.No.247 of 2004 on the file of the learned District Munsif, Mettur, in which, the respondent has claimed compensation of Rs.1,00,000/- towards the medical negligence committed by the

appellants/defendants. The learned District Munsif, Mettur by the judgment and decree dated 08.11.2004, has allowed the said suit with cost. Aggrieved by the same, the appellants/defendants herein has filed an appeal before the learned Subordinate Judge, Mettur in A.S.No.21 of 2005. The learned Subordinate Judge, Mettur, by the judgment and decree dated 06.10.2005, has allowed the appeal in respect to the first, second and the fourth defendants and dismissed the appeal filed by the third defendant. Subsequently, without seeing the findings arrived by the first Appellate Court, all the defendants have filed the present Second appeal. In the judgment rendered by the learned District Munsif, Mettur, he observed that the plaintiff/respondent is entitled to a sum of Rs.50,000/- as a total compensation together with interest on the principle sum @ 9% per annum from the date of the suit till the date of decree.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

3. The averments made in the plaint, in brief, are as follows:

Due to the wed-lock between the plaintiff and one Vijayan @ Anandakrishnan, the plaintiff gave birth to two children, namely Rani and Ganesan. At the instance of well wishers and at the request of family members of the plaintiff, on 09.05.1988, Dr.Chandra, who was working as a Medical Officer in a Government Hospital, Mettur conducted the Family Planning Operation to the plaintiff and after the operation, the plaintiff was discharged from the hospital on 15.05.1988. After five years from the date of discharge, the plaintiff become pregnant and she gave birth to one female child on 03.04.1994. Before that, immediately after knowing about the pregnancy, the plaintiff approached the Medical Officer in the Government Hospital, Mettur and questioned about the failure of the Family Planning Operation conducted to her on 09.05.1988. But nobody gave any proper reply or any treatment to terminate the pregnancy. Since the plaintiff is a poor lady, had already two children, only with a view to restrict her family, she underwent the Family Planning Operation at the Government Hospital, Mettur on 09.05.1988. But, even after undergoing the Family Planning Operation, she had given birth to a female child, which positively proves the total failure and negligence on the part of the third defendant, who conducted the Family Planning operation. Now, the plaintiff is having much responsibility in maintaining the third child. Further, she is suffering a lot with a meager income derived by her husband. The plaintiff has also put to ridicule in the eyes of public and relatives as she gave birth to a child after performing the Family Planing Operation. Since no proper and acceptable replies were given by the authorities, the plaintiff

caused a notice to the defendants on 23.08.1995 through which she claiming the damages for the negligence committed by the third defendant. On receipt of such notice issued by the plaintiff, the defendants have sent a reply on 15.11.1995 with false averments. The plaintiff estimated her damages for a sum of Rs.1 lakh, since the child was born due to the medical negligence on the part of the third defendant, all the defendants are liable to pay the compensation claimed by the plaintiff. Accordingly, the plaintiff has filed a suit in O.S.No.247 of 2004 dated 08.11.2004 on the file of the District Munsif Court, Mettur, in which she claimed compensation of Rs.1 lakh.

4. The averments made in the written statement filed by the third defendant and adopted by the other defendants, in brief, are as follows:

After conducting the Family Planning operation and after discharging from the hospital on 15.05.1988, the plaintiff did not approach any of the defendants for further advice. If the individual was actually interested in termination of fetus, she ought to have approached the defendants within 90 days from the conceived date. As the plaintiff came for delivery in the month of April 1994, the Hospital authorities have no other option except to conduct the delivery. Ever since from the date of conceive, the plaintiff had not contacted the hospital authorities till 03.04.1994. Neither the Government nor the hospital authorities cannot be held responsible for the birth of her child. Till the very date on which, the Family Welfare Operation Scheme was implemented, no failure in operation happened and this is the first instance, in the defendants' hospital. The plaintiff got operated on 09.05.1988 and conceived after five years. After gave birth to child on 03.04.1994, she came forward to claim for damages only in the year 1995. Hence, the claim made by the plaintiff, is not at all to be entertained. Conclusively, the defendants denied all the allegations levelled by the plaintiff and prays for dismissal of the suit with cost.

5. Based on the above said pleadings, the learned District Munsif, Mettur has framed necessary issues and tried the suit. During the trial, on the side of the plaintiff, the plaintiff examined herself as PW1. She also examined one more witness as PW2 and five documents were marked as Exs.A1 to A5. On the side of the defendants, one Dr.Chandra, was examined as DW1 and Ex.B1 to B6 were marked. The learned District Munsif, Mettur after considering the materials placed on record has found that since DW1, Dr. Chandra, who was working as a Doctor in the Government Hospital, Mettur conducted the Family Planning Operation to the plaintiff, and only due to the medical negligence committed by her, the plaintiff gave birth to the

third female child on 03.04.1994. In all fours, he came to the conclusion that all the defendants were found liable to pay the compensation to the plaintiff. Accordingly, learned District Munsif, Mettur, by the judgment and decree dated 08.11.2004 fixed a sum of Rs.50,000/- as a total compensation and directed the defendants to pay the same to the plaintiff alongwith interest @ 6% per annum.

6. Feeling aggrieved the above said judgment and decree dated 08.11.2004, all the defendants have filed an appeal before the learned Subordinate Judge, Mettur in A.S.No.21 of 2005 dated 06.10.2005, seeking the relief to set aside the judgment and decree dated 08.11.2004 passed by the learned District Munsif, Mettur. After an elaborate enquiry, the learned Subordinate Judge, Mettur has held that since the Family Planning Operation was conducted by the third defendant only, she herself was liable to pay the compensation. Accordingly, he dismissed the appeal suit filed by the third defendant and allowed the appeal on behalf of the other defendants. Aggrieved by the same, all the defendants have preferred the present Second Appeal.

7. This Court, at the time of admitting the Second Appeal has formulated the following substantial question of law:

(a) "Whether the Courts below have committed an error of law in dismissing the suit for damages overlooking the principles of law enunciated in the decision reported in 2005 (4) CTC 627 (State of Punjab Vs. Shiv Ram and Others)?"

Substantial Question of Law:

The learned Government Advocate appearing for the appellants/defendants has submitted that the first Appellate Court erred in confirming the judgment of the trial Court. He further submitted that the first Appellate Court mainly relied upon the admission made by the DW1 and Exs.A1 to A3, which are all the slips issued by the Government Hospital, came to the conclusion that the third defendant has committed negligence at the time of performing the Family Planning Operation to the plaintiff. The first Appellate Court ought to have relied upon the results of various researches made by the Scientists, in which it was concluded that there may be a failure of sterilization operation due to the natural causes. The learned counsel further submitted that awarding a sum of Rs.50,000/- as a total compensation to the plaintiff is an erroneous one. Accordingly, he prayed to allow this Second Appeal.

8. It is the case of the appellants/defendants that DW1 alone has performed the Family Planning Operation to the plaintiff on 09.05.1988. From the evidence of DW1, it is clear that the procedure accepted to be adopted has been followed in the plaintiff's case. Even though, DW1 has stated that she was not performed any operation, in her cross examination she categorically admitted that EX.A1, which was a receipt issued in the name of the plaintiff disclosed that, the plaintiff was admitted as an inpatient in the Government Hospital, Mettur and thereafter, she was under went sterilization operation. In the said circumstances, even though, the name of the Doctor, who conducted the said operation is not mentioned in Ex.A1, the said evidence given by the DW1, clearly reveals that the plaintiff underwent the sterilization operation as stated in the case of the plaintiff.

9. It is an admitted fact that in the year 1994, the plaintiff became pregnant and gave birth to a female child on 03.04.1994. The said circumstances concludes that only after performing the sterilization operation, the plaintiff conceived and gave birth to one female child. It shows only due to the failure of Family Planning operation performed by the hospital authorities, the plaintiff again got pregnant as a third time and gave birth to a child. It is not disputed since the plaintiff is a poor lady, it is very difficult for her to maintain her three female children. Only on observing the above facts, both the Courts below decreed the suit in favour of the plaintiff.

10. In respect to the eligibility of plaintiff in claiming compensation from the defendants, it is necessary and useful to refer the case reported in 'Halsbury's Laws of England, Fourth Edition, Volume 12, while considering the question of 'failed sterilization'', it is stated in paragraph no.896, is extracted hereunder:

'Failed sterilization' where the defendants negligent performance of a sterilization operation results in the birth of a child, public policy does not prevent the parents from recovering damages for the unwanted birth, even if the child in fact be wanted at the time of birth'.

So as per the above said observation, the Government authorities are duty bound to compensate the plaintiff necessarily. But at the same time, the research in the medical field identified that due to the natural causes, there may be a possibility in failure of sterilization operation from 0.3% to 7%.

11. Now, coming to the point that due to the natural causes, if any chance for failure of the sterilization operation. In the judgment of the State of Punjab Vs. Shiv Ram and Others in Appeal (Civil) No.5128 of 2002 dated 25.08.2005 reported in 2005 (4) CTC page 627, the Hon'ble Apex Court follows the result of research made by the Scientists and came to the conclusion that there may be a chance for failure of sterilization operation in a minimum level. In paragraph nos.29 & 39 of the above referred judgment, it is held as follows:

29.The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.

39.Failure of many a sterilization operation, though successfully performed, is attributable to causes other than medical negligence. And, yet the doctors are being faced with claim for damages. Some of the claims have been decreed by the courts without arriving at any finding providing a foundation in law for upholding such a claim. The state is also being called upon to honour such decrees on the principle of vicarious liability when the surgeon has performed a surgery in discharge of his duty. Mostly such surgeries are performed on a large scale and as a part of family welfare programmes of the Government. Obviously, such programmes are in public interest. Such like decrees act as a disincentive and have deterrent effect on the surgeons performing sterilization operations. The State, flooded with such decrees is also inclined not to pursue family planning camps on large scale though in public interest.

So as per the above observation, our Hon'ble Apex Court has already decided the issue raised in these type of cases, only against the plaintiff, who claimed compensation.

12. In the case of State of Haryana and Others Vs. Raj Rani in C.A.No.2743 of 2002 dated 29.08.2005 reported in 2005 (4) CTC 703, the Division Bench of Hon'ble Apex Court has held as follows:

'Child birth in spite of a sterilization operation can occur due to negligence of the doctor in performance of the operation, or due to certain natural causes such as spontaneous recanalisation. The doctor can be held liable only in cases where the failure of the operation is attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognized the percentage of failure of the sterilization operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognized by medical science. Thus, the pregnancy can be for reasons de hors any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable also would not arise. The decrees cannot, therefore, be upheld'.

13. Conclusively, it is aware that already the Hon'ble Apex Court settled the proposition in respect to the issue raised in this Second Appeal, specifically in our case the plaintiff conceived after 5 years from the date of sterilization operation. So there may be every possibility for failure of sterilization operation in between the gape of 5 years. Accordingly, the plaintiff is not entitled to claim compensation from the authority, who performed the sterilization operation.

14. Based on the discussions made above, the substantial question of law is answered in favour of the appellants/defendants. Accordingly, the Second Appeal is allowed and the Judgment and decree dated 08.11.2004 passed in O.S.No.247 of 2004 on the file of the learned District Munsif, Mettur, which was confirmed by the judgment and decree dated 06.10.2005 passed in A.S.No.21 of 2005 on the file of the learned Subordinate Judge, Mettur is hereby set aside. Consequently, the entire suit in O.S.No. 247 of 2004 stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif, Mettur

2.The Subordinate Judge, Mettur

+1 cc to M/s.Spl. Government Pleader (CS),
High Court, Chennai vide SR No.956/19

S.A.No.988 of 2007

SJ(CO)
SSM(14/02/2019)

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