

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.09.2019
JUDGMENT PRONOUNCED ON:18.09.2019

CORAM
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.410 of 2016
and
C.M.P.No.7223 of 2016

1.Dr.Indirani Murugan

2.The Superintendent,
Government Hospital,
Mannargudi.

3.The Joint Director,
Health Works, Thiruvarur.

4.The District Collector,
Collectorate,
Thiruvarur.

...Appellants/Appellants/Defendants

Vs.

Suvedha

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 19.01.2016 made in A.S.No.13 of 2009 on the file of Principal District and Sessions Judge, Thiruvarur, confirming the judgment and decree dated 02.09.2009 made in O.S.No.2 of 2009 on the file of Sub-Court, Mannargudi.

For Appellants : Mr.M.Sricharan Rangarajan
Special Government Pleader(CS)
For Respondent : Mr.SP.Yuvaraj

J U D G M E N T

This Second Appeal is at the instance of the defendants in O.S.No.2 of 2009 on the file of the Sub Court, Mannargudi which was originally filed as a suit by an indigent person before the Sub-Court, Thiruvarur as P.O.P.No.82 of 2008. Upon the said Pauper O.P being allowed, the suit was taken on file and was numbered as O.S.No.2 of 2009. The said suit was filed by the plaintiff seeking a compensation of Rs.4,00,000/- for the mental agony undergone by her due to the negligence of the defendants.

2. According to the plaintiff, she was admitted in the Government Hospital, Mannargudi for delivery on 19.12.2006. The 1st defendant as a gynecologist attended on her. Since normal delivery was impossible the 1st defendant advised the plaintiff to undergo cesarean surgery. Accordingly, the surgery was performed on 19.12.2006 and she delivered a male child at about 11.49 a.m.

3. While doing the surgery, the 1st defendant negligently left the surgical needle in the uterus of the plaintiff and completed the surgery. The 1st defendant though was aware that the surgical needle was left inside the uterus did not inform the plaintiff about the same. The 1st defendant had referred the plaintiff for further treatment to the Thanjavur Medical College Hospital, Thanjavur by engaging an Ambulance. The plaintiff was informed that there was an inflammation near the uterus which is required to be treated by experts and hence she is referring the plaintiff to the Thanjavur Medical College Hospital.

4. The Doctors at Thanjavur Medical College Hospital were unable to remove the needle that was left inside the uterus. After keeping her as an in-patient for almost 11 days, she was discharged on 30.12.2006 stating that she is being discharged against medical advice. Thereafter, the plaintiff was admitted in Lakshana Hospital at Thiruvavur on 04.01.2007. The Doctors at Lakshana Hospital were unable to remove the needle, hence, the plaintiff was referred to Rohini Hospital at Thanjavur and finally the needle was removed by laparoscopic surgery at Rogini Hospital, Thanjavur.

5. The plaintiff was forced to be an in-patient at Rohini Hospital, Thanjavur between 12.03.2007 and 16.03.2007. She had incurred a total expense of about Rs.70,000/- towards medical expenses between 30.12.2006 and 16.03.2007. Because of the negligence and deficiency in service on the part of the respondents the plaintiff has suffered mental agony apart from suffering financial loss due to loss of income during the period of treatment. Hence, the plaintiff issued notice on 14.08.2007 to the defendants claiming damages.

6. The defendants sent a reply on 11.10.2007 admitting the fact that a needle was kept inside. The defendants however chose to deny their liability and negligence on the ground that during the surgery there was a breakdown in electricity supply to the hospital. The needle broke and a part of the needle was left inside the uterus of the plaintiff. It was discovered by taking an x-ray on the same day and the plaintiff was referred to Thanjavur Medical College Hospital for better treatment and removal of the needle. Therefore, according to the defendants,

no negligence or deficiency in service could be attributed to the 1st defendant or the 2nd defendant.

7. The breaking of the needle was due to unforeseen circumstances and the same could not be immediately found out because of the power failure at the relevant point of time. It is also claimed that the husband of the plaintiff got her discharged from Thanjavur Medical College Hospital against the medical advice. Therefore, the defendants cannot be made liable to pay the compensation. Since her demand in the notice dated 14.08.2007 was not complied with, the plaintiff had laid a suit for recovery of damages of Rs.4,00,000/- with interest.

8. The defendants resisted the suit contending that there was no negligence or deficiency of service on their part. The defendants would further claim that the tip of the needle broke during surgery and though the same was identified immediately it could not be removed due to power failure in the hospital at the relevant point of time.

9. It is the further contention of the defendants that the plaintiff was referred to Thanjavur Medical College Hospital for further treatment. Since the Doctors at Thanjavur Medical College Hospital were unable to trace the needle, the plaintiff got herself discharged from the hospital on 30.12.2006 against medical advice. Therefore, according to the defendants, there was no negligence or deficiency in service on their part and they cannot be made liable to pay the compensation.

10. At trial the plaintiff was examined as PW1 and one Dr. Michael who treated the plaintiff in Rohini Hospital, Thanjavur was examined as PW2. The plaintiff also produced Ex.A1 to Ex.A10. The 1st defendant was examined as DW1 and no documents were produced by the defendants.

11. The trial court on a consideration of evidence on record concluded that the fact that the tip of the needle broke during surgery and it was left in the uterus of the plaintiff was not disputed by the defendants. The trial court also concluded that having found that the tip of the needle had broken and it could not be removed due to power failure, the defendants should have taken steps to have the needle removed immediately thereafter.

12. The trial Court also faulted the defendants for keeping her as an in-patient at Thanjavur Medical College Hospital from 19.12.2006 to 30.12.2006 without even attempting to remove the needle. The trial court also found that the 1st defendant had been negligent in performing the surgery with substandard needles which had resulted in the same breaking during the surgery. The fact that there was power failure in the hospital

and that the generator was not switched on immediately was also taken into account by the trial court. The trial court also disbelieved the version of the 1st defendant that the plaintiff could not be continued in anesthesia for a longer time so as to enable her to trace the broken tip of the needle. On the above conclusions, the learned trial Judge held that the defendants are liable for damages and decreed the suit as prayed for.

13. Aggrieved the defendants preferred an appeal in A.S.No.13 of 2009 on the file of the Principal District Judge, Thiruvavur. The lower appellate court upon re-appreciation of the evidence on record agreed with the trial court and after referring to various judgments of this court, the learned Principal District Judge dismissed the appeal confirming the judgment and decree of the trial court. Aggrieved the defendants have come forward with this Second Appeal.

14. Notice of motion was ordered on 28.04.2016. Pursuant to the said notice the respondent had entered appearance through counsel.

15. I have heard Mr.Sricharan Rangarajan, learned Special Government Pleader for the appellants and Mr.SP.Yuvaraj, learned counsel appearing for the respondent.

16. Mr.Sricharan Rangarajan, learned Special Government Pleader would contend that the courts below were not right in fastening the liability for payment of compensation on the appellants. He would further contend that the breaking of the needle during surgery was an act of God and no negligence could be attached to the same. He would also point out that the 1st defendant as a Doctor on duty had taken all possible steps to retrieve the needle. Unfortunately, she could not succeed as the Anesthetist was against keeping the patient under anesthesia for a longer time. Therefore, only in order to save the plaintiff, the 1st defendant had completed surgery and had referred the plaintiff to Thanjavur Medical College Hospital for better treatment.

17. The report of the 1st defendant as well as the case sheet would show that the 1st defendant had taken utmost care expected of a Doctor in the normal circumstances. Therefore, the courts below were not right in fastening the liability to pay the compensation on the defendants. It is also the contention of the learned Special Government Pleader that the courts below erred in granting a joint and several decree against the defendants.

18. Contending contra Mr.SP.Yuvaraj, learned counsel appearing for the respondents would submit that once the fact that the needle broke during the surgery is admitted the 1st defendant/ 1st appellant as a Gynecologists should have taken all steps to retrieve the needle. The fact that there was a power failure in the hospital at the relevant point of time would also show that the hospital was not fully equipped. The very fact that the needle broke during the surgery would show that substandard needle was used for surgery at the Government Hospital. This by itself, according to the counsel would show that there was negligence and deficiency in service on the part of the appellants.

19. Upon consideration of the rival submissions, the following question of law emerges for consideration in this appeal:

Whether the courts below were right in granting a joint and several decree against the defendants, more so when no negligence could be attributed to the 1st defendant Doctor who had performed the surgery?

20. The learned counsels have addressed the court on the above question of law.

The admitted facts are as follows:-

21. The plaintiff was admitted in Government Hospital, Mannargudi on 19.12.2006 at about 9.20 a.m. Since normal delivery was considered impossible, she was advised to undergo cesarean surgery. She also underwent the surgery. Unfortunately, during the surgery, the tip of the needle broke and a part of it got struck in the uterus. Since there was a power failure at the hospital at the relevant point of time during the surgery, the tip could not be traced immediately, despite diligent attempts made by the 1st defendant and another Dr.Ashokan. The Doctors were forced to sew up the uterus and complete the surgery since the Anesthetist was reluctant to continue the plaintiff under anesthesia any longer. The defendants did not rest there, the 1st defendant had taken care to refer the plaintiff to the Thanjavur Medical College Hospital for further treatment. It is also not in dispute that the plaintiff was sent to the Thanjavur Medical College Hospital on 19.12.2006 for further treatment and she was an in-patient in Thanjavur Medical College Hospital till 30.12.2006. However, despite extensive exploration at the Thanjavur Medical College Hospital, the needle could not be traced.

22. The report of the Tutor in Surgery, Thanjavur Medical College Hospital dated 16.07.2007 which forms part of Ex.A1 shows the chronology of events and the inability of the Doctors

at Thanjavur Medical College Hospital to locate the needle. Since it was more than 11 days, the plaintiff lost confidence in the Doctors at Thanjavur Medical College Hospital and sought for discharge.

23. After discharge she had gone to a private hospital, where, the needle was removed by performing a Laparoscopic surgery on 12.03.2007. It is the case of the plaintiff that there was negligence on the part of the Doctors at Mannargudi Government Hospital as well as the Thanjavur Medical College Hospital because of which she had to suffer for more than three months with a foreign object in her system. She had also suffered severe mental agony and dis-stress with a new born child to take care of.

24. The above facts which are admitted would definitely show that there had been negligence on the part of the defendants. But whether the 1st defendant could be blamed for the negligence is the question that has to be decided. A perusal of the case sheet of the respondents at the Mannargudi Government Hospital would show that the needle broke during surgery and due to power failure the needle could not be traced and retrieved immediately. It is also seen from the report that due to the unwillingness on the part of the Anesthetist to keep the plaintiff under anesthesia for a longer time and due to power failure the needle could not be immediately removed. Therefore, the Doctors were forced to close the abdomen and suture it and refer the patient for expert treatment at the Thanjavur Medical College Hospital.

25. It is seen from the case sheet that the 1st defendant had spoken to the Head of the Department of Gynecology, Raja Mirasdar Hospital, Thanjavur and upon her advice, the 1st defendant had arranged to send the plaintiff for further treatment to Thanjavur Medical College Hospital. At 2.00 p.m on the same day, the husband of the plaintiff had been informed about the tip of the needle being left inside the uterus and she is being referred to Thanjavur Medical College Hospital for further treatment. Unfortunately, though the plaintiff remained as an in-patient in Thanjavur Medical College Hospital for nearly 11 days between 19.12.2006 and 30.12.2006, the Doctors could not trace the needle and remove it. Thereafter, on 30.12.2006, the plaintiff had got discharged against medical advice.

26. The note of the Tutor of Department of Surgery of Thanjavur Medical College Hospital states that inspite of extensive exploration the needle could not be located. Therefore, it could be seen that the major portion of the negligence could be attributed to the Doctors at Thanjavur

Medical College Hospital. Unfortunately, the plaintiff has not impleaded the Thanjavur Medical College Hospital or its Dean as a party to the proceeding. However, the District Collector of Thiruvavur representing the State has been impleaded as a party. For any negligence or inaction on the part of the employees, the State is liable and it is for the State to compensate for any damages suffered by the patient due to negligence or inaction on the part of the Doctors at the Government Hospitals.

27. If we are to look at the sequence of events it is clear that no negligence can be attributed to the 1st defendant, Gynecologist at Government Hospital, Mannargudi. It is not the case where the needle was left inside the uterus due to negligence. It is an admitted case that the needle broke during surgery and a part of it got stuck inside the uterus. Attempts made to trace the needle and retrieve it immediately failed due to power failure in the hospital and due to the unwillingness of the Anesthetist to continue the patient under anesthesia. It is seen from the reports that an x-ray was taken on the same day and the part of the broken needle was identified.

28. The 1st defendant had consulted her superior viz., Head of the Department, Gynecology, Raja Mirasdar Hospital, Thanjavur and upon her advice she had referred the plaintiff to Thanjavur Medical College Hospital on the same day. It is not in dispute that the plaintiff was taken to the Thanjavur Medical College Hospital on the same day and she was admitted as an in-patient where she remained as in-patient for nearly 12 days till 30.12.2006. Despite keeping her as in-patient for 12 days, the Doctors at Thanjavur Medical College Hospital were unable to trace the needle. It is thereafter, the plaintiff got discharged and went to a private hospital where the broken part of the needle was removed from her system by a Laparoscopic Surgery.

29. As already observed it is the negligence on the part of the Doctors at Thanjavur Medical College Hospital which resulted in the plaintiff suffering for more than 3 months and finally having the needle removed on 16.03.2007 at a private hospital. The fact that the plaintiff had suffered both mentally and physically during the period between 19.12.2006 and 16.03.2007 cannot be denied. The fact that it was the breaking of the needle during surgery and the needle got stuck in the uterus was the reason for the plaintiff's sufferings cannot also be denied. The only question that looms large is as to whether the 1st defendant Doctor who performed the surgery could be fastened with the liability to pay damages.

30. The sequence of events extracted above would show that the 1st defendant had taken all possible care expected of a Doctor in a crisis to save the patient and also to have the foreign object removed from her system. She has done whatever she could in a given situation to save the patient. Unfortunately, it is the substandard quality of the needle, power failure, the time gap taken between the power failure and the operation of the generator at Mannargudi Government Hospital which had attributed to the unenviable situation, by which the plaintiff had suffered both physically and mentally. The inability of the Doctors at Thanjavur Medical College Hospital to trace the foreign object despite keeping the plaintiff as an in-patient for 12 days is inexplicable.

31. No doubt true that the plaintiff had got herself discharged against medical advice. Any normal human being who knows that there is a foreign object in her system and the Doctors are unable to even trace it for nearly 12 days would only take such step and to get better treatment elsewhere. The very fact that the needle was removed at a small private hospital at Thanjavur would show that there has been a failure on the part of the Doctors at Thanjavur Medical College Hospital in performance of their duties. Negligence is writ large. A perusal of the report of the Tutor of Surgery, Thanjavur Medical College Hospital dated 16.07.2007 would show that there had been no diligent attempt by the Hospital Authorities to trace the needle.

32. I am therefore of the considered opinion that while the liability to compensate for the negligence must remain it cannot be fastened on the 1st defendant. The courts below have also found that it is the breakage of the needle and the power failure that had attributed to the situation. Therefore, it is for the State which runs the Government Hospitals to compensate the plaintiff. The 1st defendant as an employee had done everything within her powers to save the patient. She cannot be penalized for the failure on the part of the Doctors at Thanjavur Medical College Hospital to trace the needle in the plaintiff's uterus.

33. I am therefore of the considered opinion that the courts below were not right in granting a joint and several decree against the 1st defendant also and the same requires modification. The substantial question of law framed is answered to the effect that the 1st defendant cannot be made liable to pay the compensation as there was no negligence on her part. On the other hand the negligence was actually on the part of the Authorities who procured substandard needles, the absence of continuous power supply at the Government Hospital and the Doctors at the Thanjavur Medical College Hospital who were

unable to trace the needle for more than 12 days. No doubt, the State which is represented by the District Collector, Thiruvarur is liable to compensate the respondent.

34. In fine, the Second Appeal is partly allowed modifying the judgment and decree of the trial court directing the defendants 2 to 4 to pay the compensation as determined by the courts below and exonerating the 1st defendant from any liability. There will be a decree for payment of Rs.4,00,000/- (Rupees Four Lakhs only) as damages with 12% interest from the date of suit till the date of payment as against the defendants 2 to 4 alone and the suit as against the 1st defendant will stand dismissed. It is brought to my notice that the 1st defendant has deposited a sum of Rs.2,00,000/- in compliance with the interim orders of this court while granting stay of execution of the decree. The 1st defendant would be entitled to repayment of the said Rs.2 lakhs deposited by her. If the said sum of Rs.2,00,000/- has been withdrawn by the plaintiff, the defendants 2 to 4 shall pay the same to the 1st defendant within a period of 3 months from the date of receipt of a copy of this judgment. Any departmental action taken against the 1st defendant will stand terminated in view of my findings that the 1st defendant was not negligent in performance of her duties as a Gynecologist. No costs. Consequently, the connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The learned Principal District and Sessions Judge, Thiruvarur.
2. The learned Sub - Judge, Mannargudi.
3. The Section Officer, V.R. Section, High Court of Madras, Chennai 600 104.

+1 CC to The Special Government Pleader (Criminal Side) sr 80349
+1 CC to Mr.SP.Yuvaraj, Advocate sr 80457.

S.A.No.410 of 2016

SSV(CO)
SP(21/08/2020)