

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-26310-2018 (O&M)
Date of decision : 09.09.2019

Manpreet Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Balbir Singh Jaswal, Advocate,
for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (Oral)

Prayer in the instant petition is for direction to the respondents to pay compensation/damages to the petitioner in lieu of delivery and upkeep of the fourth child born to her despite having been undergone tubectomy.

It is contended that the petitioner belongs to the poorest strata of society. As she was already a mother of three children, chose to undergo tubectomy operation on 31.03.2015 at Civil Hospital Baba Bakala Sahib. However, to the utter shock and despair, she again conceived in the month of April, 2017. Thereafter, the petitioner visited the hospital where the doctor confirmed the pregnancy and informed her that the same could be medically terminated if she wanted. However, the petitioner chose otherwise. On 15.11.2017, the petitioner gave birth to a male child.

Learned counsel contends that though the petitioner has been paid an amount of ₹30,000/-, in terms of Family Planning Indemnity Scheme (FPIS) of the Punjab Government, but the amount is meagre as the petitioner belongs to a poor family, addition of one member has increased the expenses without any additional income. Thus, a prayer for enhancement of compensation/damages has been prayed for. Cites ***State of Haryana Vs. Smt. Santra, 2000(2) RCR (Civil) 739***; and ***State of Punjab Vs. Smt. Lakhwinder Kaur (P&H), 2005(4) RCR (Civil) 294***.

On the other hand, learned State counsel contends that the sterilization operation was conducted upon the petitioner on 31.03.2015 on her own request. Before the operation, she was made aware of the criteria, procedure and effects thereof. A consent form after making her understand the import thereof (Annexure R-1) was also signed by the petitioner before the operation. It is further submitted that after the operation, the petitioner neither visited the hospital for getting requisite sterilization certificate nor for follow-up. After conception on 14.03.2017, the petitioner visited the hospital only on 05.06.2017. She was examined and informed about the possibility of medical termination of pregnancy. However, the petitioner wanted to continue with the pregnancy and requested for grant of financial aid/compensation under the relevant scheme. The petitioner has already received ₹30,000/- under the scheme of the State government.

Heard.

In the instant case, the petitioner underwent sterilization operation at Civil Hospital, Baba Bakala Sahib, on 31.03.2015, on her own

request. Before being operated upon, she signed a consent form (Annexure R-1), relevant portion whereof, reads thus:-

(b) “....I am aware that other methods of contraception are available to me. I know that for all practical purposes this operation is permanent. I also know that there are still some chances of failure of the operation for which the operating doctor and the health facility will not be held responsible by me or by my relatives or by any other person whomsoever.

(g) In case of complication following the sterilization operation, including failure, I will accept the compensation as per the existing provisions of the Government of India Family Planning Insurance Scheme as full and final settlement.

(h) If I/my wife get(s) pregnant after the failure of the sterilization operation and if I am not able to get the foetus aborted within two weeks, then I will not be entitled to claim any compensation over and above compensation offered under the Family Planning Scheme from any court of law in regard of any other compensation for the upbringing of the child.

(i) I agree to come for follow-up visits to the hospital/institution/doctor/ health facility as instructed, failing which I shall be responsible for the consequences, if any.....”

From the perusal of the case file, it emerges that after the

sterilization operation, the petitioner never visited the hospital for getting

requisite sterilization certificate. She also did not turn up for follow-up treatment etc. It was only on 05.06.2017, when the petitioner visited the hospital and by that time, she was twelve weeks' pregnant. Even at that stage, she was informed about the possibility of medical termination of pregnancy to which she refused and continued with the pregnancy. Rather, she moved an application seeking compensation under the existing policy and an amount of ₹30,000/- was granted to her. Thus, the petitioner herself had been negligent as she did not follow the post-operative instructions, precautions and guidelines, which were vital for the success of sterilization. To the contrary, there is no averment much less some cogent material to show that there was any negligence on the part of the medical staff or the institute. The case law cited by learned counsel for the petitioner is distinguishable on facts.

In view of the above, this Court does not find any merit in the instant petition.

However, keeping in view the facts that the petitioner comes from the poorest strata of the society and the rising price index, this Court feels that the ends of justice would be adequately met in case, the respondents are directed to grant another amount of ₹50,000/- as enhanced compensation. The said amount be kept in fixed deposits in a nationalised bank fetching highest rate of interest. The said amount be not encashed till the child attains majority. The monthly interest be credited in the bank account of the petitioner and shall be used for providing good diet and nutrition to the child.

Disposed of in the above terms.

09.09.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No