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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2021
PRONOUNCED ON : 17.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1461 of 2008
and
M.P. Nos. 1 of 2008 and 1 of 2010

1. Joint Director of Health Service
Periyar District at Erode-1.
2. The Deputy Director of Medical Rural Health &
Family Welfare, Periyar District at Erode.
3. The District Collector, Erode District, Erode
4. The Director of Family Welfare, Chennai 8
5. The Secretary, Health Department, Secretariat
Chennai. ...Appellants / Defendants

Vs.

1. Rajendran, Son of Gurusamy (died)
2. Minor Ranjitha, D/o. Rajendran (Major)
3. Mrs. Jothi
4. Velavan (minor)
5. Selvi. Nithyapriya (minor) ... Respondents / Plaintiff's

Respondents 3 to 5 brought on record as LRs of
the deceased first respondent viz. Rajendran
vide order of court dated 08.02.2021 made in
CMP No.25850/19 in S.A. No.1461/2008

R2 declared as major vide order of court dated
08.02.2021 made in CMP No.25851/19 in SA
No.1461/2008

Prayer: Second Appeal is filed under Section 100 of CPC, 1908
against the judgment and decree dated 21.04.2007 made in
A.S.No.61/2006 on the file of the Principal District Judge of
Erode which was reversed by the judgment and decree made in
O.S.No.407/1998 dated 08.07.2004 on the file of the Principal
Subordinate Judge of Erode.



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For Appellants : Mr. N. Manikandan
Government Advocate (CS)

For Respondents : Mr. N. Manokaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.04.2007 passed in A.S.No.61/2006 on the file of the Principal District Court, Erode, modifying the judgment and decree dated 08.07.2004 passed in O.S.No.407/1998 on the file of the Principal Subordinate Court, Erode.

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

3. The defendants in O.S.No.407/1998 are the appellants in the second appeal.

4. Suit for damages / compensation.

5. The case of the plaintiffs, in brief, is that the first plaintiff married one Radha six years back and out of the wedlock, Radha gave birth to one female baby, who is aged 3 years and she is the second plaintiff and thereafter, Radha got conceived again and delivered a male baby on 26.04.1996 and the abovesaid delivery is a normal delivery and therefore, the first plaintiff and his wife decided to go for a family planning and they were advised to go to Thanthai Periyar Government Head quarters Hospital, Erode, for family planning operation by the Primary Health Centre, Modakkurichi and the first plaintiff's wife Radha was admitted at Erode Government Hospital for family planning operation on 28.04.1996 and after medical check up by a team of doctors, the doctors were satisfied that she was in good health and a fit person to have the sterilisation surgery, on 30.04.1996 Radha was taken to operation theatre, where a team of doctors, under the control of the defendants, performed the operation and declared the operation a success. After the operation, Radha was admitted as inpatient in the hospital and given treatment and however, the very next day, Radha experienced high temperature and she was uneasy and despite the same being brought to the notice of the doctors concerned, no immediate attention was paid to the first plaintiff's wife and only the routine check up was given to Radha and thereby her health



condition got deteriorated and she experienced untold sufferings and despite the same, the duty doctors paid only casual visits and at last, the first plaintiff's wife Radha died on 05.05.1996 at about 5.20 A.M. and the dead body was handed over to the first plaintiff by the defendants without giving any explanation for her death and no postmortem was done on her body. Being a layman, the first plaintiff received the dead body and cremated her. Thereafter, he had approached the hospital authorities to know the cause of death of his wife, but, there was no proper response. Later on, he was informed that his wife died due to Pyogenic Meningitis Septicemia and further the first plaintiff believed that his wife had died only due to the carelessness and negligence on the part of the duty doctors during sterilisation operation and post operational period and the male baby delivered by Radha, though was hale and healthy, however, the baby also died after 90 days and even the cause of death of the baby is not known to the first plaintiff. Probably the baby would have died due to the infection from the feeding of the mother. If the duty doctors had treated Radha, particularly, during and after operational period, the life of Radha could have been saved as well as the baby could have also been saved. The first plaintiff's wife Radha was engaged as an agricultural coolie and was maintaining two buffaloes and was earning not less than Rs.2000/- per month and out of the said income their daughter was being maintained. Due to the demise of Radha, the plaintiffs have lost her love and affection as well as are suffering immensely on various factors and though the defendants would claim that their doctors are specialised in all the fields of medicine, however, they had failed to bestow utmost attention and care to the first plaintiff's wife who had suffered during the post operational period and therefore, the defendants are liable to pay suitable damages to the plaintiffs for the demise of Radha who had died only on account of the improper treatment and the negligence caused by the doctors in providing good treatment to his wife and accordingly, the plaintiffs have come forward with the suit claiming a compensation of Rs.3,00,000/- for the death of the first plaintiff's wife.

6. The defendants resisted the plaintiffs' suit contending that the first plaintiff's wife Radha was admitted in Erode Government Hospital for family planning operation on 28.04.1996 and she underwent medical check up and the team of doctors were satisfied that she was in good health and also a fit



person for sterilisation and on 30.04.1996, the first plaintiff's wife was taken to operation theatre and operated and the operation was declared as success. However, it is false to state that on the very next day Radha experienced high temperature and she was uneasy and also false to state that the abovesaid complaints were brought to the knowledge of the duty doctors but they had not paid immediate attention to the first plaintiff's wife. The treatment given to Radha was complete in all the aspects and inspite of the proper treatment she had died unexpectedly due to Pyogenic Meningitis i.e. Septicemia and there was no negligence on the part of the medical officers qua the death of Radha. The Government Head Quarters Hospital, Erode, is one of the best hospitals in the state with all the facilities and the first plaintiff's wife had died unexpectedly even though special care was provided to her and it is false to state that the dead body was handed over to the first plaintiff without explaining the reasons of her death. As per the request of the first plaintiff and his relatives, the dead body was handed over without postmortem and there is no negligence or carelessness on the part of the defendants in providing the treatment to Radha. The defendants are not admitting the earning capacity of Radha as claimed in the plaint. The defendants are not liable to pay the compensation to the plaintiffs and hence the suit is liable to be dismissed.

7. In support of the plaintiffs' case, P.W.1 was examined and Exs.A1 to A12 were marked. On the side of the defendants D.Ws.1 to 4 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 grant a sum of Rs.1,60,000/- as compensation to the plaintiffs after holding that the deceased Radha had died only due to the carelessness and negligence of the doctors of the defendants in providing adequate and proper treatment. Aggrieved over the quantum of compensation fixed by the trial court, the first appeal has been preferred by the plaintiffs. The first appellate court, on an appreciation of the materials available on record, both oral and documentary, and the submissions put forth by the respective parties, was pleased to modify the judgment and decree of the trial court by enhancing the compensation to the plaintiffs at Rs.3,00,000/- and accordingly disposed of the appeal. Challenging the same, the



present second appeal has been laid by the defendants.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Whether the court below is correct in awarding compensation by relying upon G.O. Ms. No.183, Health and Family Welfare (R.1) Department, dated 11.09.2006?
- 2) Whether the appellate court decree is justifiable in enhancing the compensation amount based on G.O. when it is not marked as a document before the trial court?
- 3) Is not the appellate court erred in enhancing the compensation amount by misunderstanding the contention of the G.O.?"

10. The suit has been laid by the plaintiffs seeking compensation on account of the demise of Radha, the first plaintiff's wife and the mother of the second plaintiff, as according to the plaintiffs, the deceased Radha died due to the carelessness and negligence of the doctors of the defendants' hospital in providing proper and adequate treatment to her during her hospitalisation for sterilisation and during post operational period. From the pleas and the materials placed on record, it is found that, and not disputed as such, the deceased Radha was performed sterilization operation by the doctors of the defendants on 30.04.1996 at Government Hospital, Erode, and the operation has been declared as success. It is also not disputed by the defendants that when Radha was admitted in the hospital for sterilization operation, she had underwent medical check up and a team of doctors were satisfied that she was in good health and also a fit person to have sterilization. Therefore, even according to the defendants, the deceased Radha was a fit person to undergo sterilization operation in all aspects and according to them, the operation performed was a successful one. However, the fact remains that Radha subsequently died on 05.05.1996 during the hospitalisation and according to the plaintiffs after the sterilization operation, the deceased experienced high temperature and she was uneasy and though the abovesaid condition of the deceased was reported to the doctors concerned, no attention was paid to her other than the normal attention and thereby the deceased' condition became serious and despite the untold sufferings experienced by the deceased had been reported



to the doctors, they had not bestowed their attention to her properly and resultantly, according to the plaintiffs, the deceased died due to the negligence and carelessness of the doctors who had attended on her by not providing proper and adequate treatment.

11. In this connection, the defendants would claim that the deceased Radha died due to Pyogenic Meningitis i.e. Septicemia. D.W.1 is the chief medical officer of the Government Hospital, Erode, and though D.W.1 would claim that proper and adequate treatment had been provided to the deceased and however, the deceased had died due to Pyogenic Meningitis i.e. Septicemia, D.W.1 has clearly admitted that she was not the part of the team who performed the sterilization operation on the deceased and further admitted that she has no personal knowledge as to how the operation was conducted and further also admitted that she had seen the deceased Radha for the first time on 04.05.1996 and does not know as to what were the medicines prescribed to her and also does not know directly as to her condition thereafter and further admitted that in the case sheet marked as Ex.B1 it has been reported that she was experiencing temperature at 101° Fahrenheit and the same had been corrected also and even the medicine prescribed to her in Ex.B1 had been corrected and further also admitted that as regards the cause of death of the deceased being Pyogenic Meningitis i.e. Septicemia, it is her evidence that the same could only be explained by the special doctors and though, she being the head of the Government Head Quarters hospital, Erode, she has admitted that after the death of the deceased, the cause of the death had not been ascertained by conducting the post mortem on the dead body and the above being the evidence of D.W.1, as rightly concluded by the courts below, no safe reliance could be attached to the evidence of D.W.1 to hold that proper and adequate treatment had been provided to the deceased Radha particularly for the sufferings undergone by her after the sterilization operation. The deceased Radha having died 5 days after the sterilization operation and when she has been declared to be the fit person to undergo the operation by the team of doctors, it is for the doctors, who attended on her after the operation, to explain as to why she had suddenly developed the pain and sufferings and what are the reasons for the same and what medicines had been offered to her with reference to the same. However, when nothing has been disclosed by D.W.1 on the



abovesaid aspects, the evidence of D.W.1 would be of no use to sustain the defence version.

12. D.W.2 is the medical officer who had performed the sterilization operation on the deceased. She would claim that the operation was conducted properly and the same is a successful one. D.W.2 would further admit that the deceased was found to be a fit person to undergo the sterilization operation and also admitted that in Ex.A8, which is the death report issued by the Superintendent of the Government Hospital, Erode, no reason has been assigned for the death of Radha and further also admitted that no postmortem was conducted on the dead body. Therefore, when as per the evidence of D.W.2, the deceased was held to be a fit person to undergo sterilization operation and though D.W.2 would claim the sterilization operation performed on the deceased was a successful one, she is unable to explain as to how could the deceased thereafter develop high temperature and uneasy feelings and discomfort and why proper post care treatment had not been provided to her by the doctors attached to the hospital. When the real cause of death of the deceased could only be gathered by conducting the postmortem, it is very strange on the part of the doctors to allege that no postmortem was conducted on the dead body particularly when they had asserted that the deceased died unexpectedly due to Pyogenic Meningitis i.e. Septicemia. If that is the real cause of the death of the deceased, when the same could be gathered from the postmortem certificate, if it had been done, there is no proper explanation on the part of the doctors as to why the postmortem had not been conducted on the dead body. The same has also been accepted by doctor Radha examined as D.W.3. D.W.3 is the doctor who was part of the team of the sterilization operation conducted on the deceased and she has admitted that the deceased was found to be a fit person to undergo the sterilization operation. D.W.3 has clearly admitted that only by conducting the postmortem, the proper and real cause of death of the deceased could be ascertained. Such being the evidence of D.W.3, when the case of the defendants that the deceased had died unexpectedly after the operation, that too, after 5 days, the hospital authorities should have conducted the postmortem of the deceased to determine the real cause of the death.

13. D.W.4 is the doctor who claims to have given some treatment to the deceased and according to him, on 05.05.1996 at



about 5.15 A.M. when he examined her she was having some breathing problem and she had no complaints of any pulse and blood pressure, etc., and however, she had been reported to be dead at 5.20 A.M. and would admit that he could not say as to whether the deceased could have been saved if proper treatment had been provided to her. Therefore, when the doctors who had actually given treatment to the deceased during the post operational period had not been examined by the doctors to prove as to the nature of the treatment given to the deceased, what were the sufferings undergone by the deceased during the relevant period and when the doctors examined as D.Ws.1 to 4 are not clear and able to say positively as to what actually were the sufferings undergone by the deceased after the operation, what was the special treatment provided to her to alleviate her sufferings and when according to them the deceased had died unexpectedly due to Pyogenic Meningitis i.e. Septicemia it is for the doctors to explain that the deceased had died despite the post treatment provided to her. Even the alleged cause of death, as spoken to by the doctors, as such cannot be accepted straightaway as above pointed out, as the real cause of death of the deceased could only be ascertained by conducting the postmortem of the deceased. Therefore, when it is found that the deceased having died during post operational period i.e. 5 days after the operation, on 05.05.1996, when the doctors examined in the matter are unable to come out with the clear picture as to how come the deceased had developed complications when she had been declared to be a fit person to undergo the operation and what were the medicines prescribed to the deceased for solving her problems and when according to the plaintiffs no proper treatment had been given to the deceased despite the complaints suffered by her being brought to the knowledge of the doctors concerned, the resultant position would be that, as held by the courts below, the deceased had died only due to the negligence and carelessness of the doctors in providing the necessary treatment to her during the post operational period and though the sterilization operation was declared to be a success one, when the deceased is found to have been not provided with proper post operation care and treatment and the deceased having developed complications thereafter and the defendants having not established that proper and adequate treatment had been provided to the deceased during the relevant period i.e. from 30.04.1996 to 05.05.1996 till her demise and when the cause of death alleged by the defendants for the deceased death is not established to be



the true cause, particularly, the defendants having failed to perform the postmortem of the deceased for the reason best known to them, all put together, the determination of the courts below that the deceased had died only due to the carelessness and negligence of the defendants' doctors do not warrant any interference as the abovesaid determination is found to be correct and right based on the proper appreciation of the materials available on record.

14. The trial court had determined the compensation payable to the plaintiffs at Rs.1,60,000/-, whereas the first appellate court had determined the compensation payable to the plaintiffs at Rs.3,00,000/- as claimed in the plaint.

15. The first appellate court seems to have relied upon the G.O. Ms. No.183, Health and Family Welfare (R.1) Department, dated 11.09.2006. However, in my considered opinion, the abovesaid G.O. may not be applicable to the case at hand, when it is found that the deceased had died only due to the negligence and carelessness of the defendants' doctors by not providing proper and adequate treatment to her during the post operational period i.e. from 30.04.1996 to 05.05.1996. Furthermore, the abovesaid G.O. is found to have come into effect from 29.11.2005. In any event, the first appellate court, after adverting to the abovesaid G.O., after asserting that it is only the defendants' carelessness and negligence which is the cause for the death of the deceased, considering the age and income of the deceased, particularly, there being no contra evidence, the deceased having died at a very young age and the sufferings and pain undergone by the plaintiffs due to the sudden demise of the deceased, all put together, determined the compensation at Rs.3,00,000/- . The quantum of compensation fixed by the first appellate court, in my considered opinion, cannot be held to be excessive, particularly, considering the age of the deceased, the earning capacity of the deceased and the longevity of the deceased if she had remained alive and therefore, the compensation of Rs.3,00,000/- awarded to the plaintiffs is a reasonable compensation and I do not find any valid reason to interfere with the same.

16. There is one other aspect to be considered in this matter. The trial court had granted a compensation of Rs.1,60,000/- in favour of the plaintiffs, after holding that the deceased had died only due to the negligence and carelessness of



the doctors by not providing adequate treatment to her during the post operation period. Challenging the same, the defendants have not preferred any appeal. It is only the plaintiffs who had come forward with the appeal seeking for enhancing the compensation. Even in the said appeal, the defendants have not preferred any cross objection. Therefore, when the determination of the trial court that the deceased had died only due to the carelessness and negligence of the doctors of the defendants by not providing proper and adequate treatment during post operational period and when the same had also been confirmed by the first appellate court and the reasons assigned by the courts below for the same being centering on factual matrix and not shown to be in any manner perverse, illogical, irrational, I am not inclined to interfere with the said determination at this stage of second appeal. The substantial questions of law formulated are centering around the G.O. Ms. No.183, Health and Family Welfare (R.1) Department dated 11.09.2006. Further, as above pointed out, though the first appellate court has referred to the abovesaid G.O., it has not relied upon the abovesaid G.O. for enhancing the compensation in favour of the plaintiffs. On the other hand, on factual matrix, considering the age, earning capacity of the deceased and the sufferings and pain that would be undergone by the plaintiffs due to her sudden demise on various heads, rightly enhanced the compensation payable to the plaintiffs at Rs.3,00,000/-. No reason is warranted to interfere with the abovesaid determination of the first appellate court. In my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal, for the reasons aforesaid, are accordingly answered in favour of the plaintiffs and against the defendants.

17. In support of his contentions, the plaintiffs' counsel, placed reliance upon the following decisions reported in

- 1) CDJ 2006 MHC 1749 (R. Muthu v. State of Tamil Nadu, rep by its secretary to Government & others)
- 2) 2016-4-L.W.499 (S. Ganesan v. The Secretary to Government, Health Department, Govt. of Tamil Nadu)
- 3) 2019-5-L.W. 755 (The District Collector, Salem and others vs. Ashokan and others)

Similarly, in support of his various contentions, the Government Advocate placed reliance upon the following decisions reported in



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- 1) CDJ 2009 MHC 5121 (Kanagavalli v. The Secretary to Government, Dept. of Health & others)
- 2) Civil Appeal No.5128 of 2002 2005 Scale 6 770 (State of Punjab v. Shiv Ram and others)
- 3) 2014-2-LW 862 (Union of India (UOI) and Ors. vs. Vasavi Co-op Housing Society Ltd., and Ors)
- 4) 1999 ACJ 454 (Shanta v. State of Andhra Pradesh and Ors.)
- 5) (2008) 4 Supreme Court Cases 219 (Chokalingaswami Idol through its Hereditary Trustee R.N. Pillai vs. Gnanapragasam (dead) by Lrs

The principals of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18. In conclusion, the judgment and decree dated 21.04.2007 passed in A.S.No.61/2006 on the file of the Principal District Court, Erode, modifying the judgment and decree dated 08.07.2004 passed in O.S.No.407/1998 on the file of the Principal Subordinate Court, Erode, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To

1. The Principal District Judge,
Erode,

2. The Principal Subordinate Court,
Erode,

+1cc to M/s.N.Manokaran, Advocate, S.R.No.16857

+1cc to the Special Government Pleader(CS), S.R.No.17617

S.A.No.1461 of 2008

PA(CO)

SB(22/09/2021)