

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.4798 of 2017
(Through Hybrid mode)

Mamata Mallik

....

Petitioner

Mr. P. K. Rout, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. A. K. Sharma, Addl. Govt. Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
28.09.2022

Order No.

- 07.
1. Mr. Rout, learned advocate appears on behalf of petitioner and submits, his client underwent sterilization operation. It was defective. She thereafter conceived and delivered a male child. She has moved Court to obtain compensation.
 2. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and draws attention to, inter alia, paragraph 8 in the counter to submit, Rs.30,000/- is the compensation to be paid on insurance taken by the State to implement the Central scheme. Under the policy the claim must be made within 180 days. The claim was not made within 180 days of the operation and hence, there was rejection. He relies on retroactive clause of the insurance company, prescribing the period in which claim must be made.

3. There is no dispute that the sterilization operation conducted on petitioner was ineffective. State, in paragraph 6 of its counter has admitted so. The only ground of resistance is, the insurance policy covers for payment of compensation, on prescribed period of 180 days from date of operation for the claim to be made.

4. The retroactive clause is reproduced below.

“All claims arising due to failure of Sterilization, if detected during this policy period shall be admissible for all the Sterilization operations/procedures done w.e.f. 29/11/2005, the day when the first policy had incepted and renewed thereafter. In case of non-renewal or break or cancellation of the policy, the claims due to failure of sterilization shall be accepted till 180 days.”

Above clause does not support State's contention. It is only in case of non-renewal or break or cancellation of the policy that claim due to failure of sterilization will be accepted by the insurance company till 180 days. Otherwise, all claims are admissible.

5. State is directed to pay the schematic compensation of Rs.30,000/- to petitioner by itself or through the insurance company, within four weeks of communication. On failure to do so State will pay interest on the sum at 6% simple per annum, on and from 17th March, 2017 (date of presentation of the writ petition till payment).

6. The writ petition is disposed of.

(Arindam Sinha)
Judge