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S.A No.313 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30 .08.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A No.313 of 2013 &
M.P No. 1 of 2013

- 1.The Tamil Nadu Government,
Rep. By its District Collector,
Perambalur.
- 2.The Deputy Director of Medical Services and Family Welfare,
Perambalur.
- 3.The Joint Director of Medical Services and Family Welfare,
Perambalur.
- 4.The Medical Officer, Government Hospita,
Perambalur.

... Defendants/Appellants/Appellants
Vs.

Bernathmary

...Plaintiff/Respondent/Respondent

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 30.08.2005 made in A.S No.78 of 2004 on the file of District Judge, Perambalur which was confirmed by the Judgement and decree made in O.S No.28/1998, dated



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05.02.2004 on the file of the Subordinate Judge, Ariyalur.

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For Appellants : Mr.E.Vijay Anand
For Respondent :

JUDGMENT

This second appeal has been filed against the Judgement and Decree dated 30.08.2005 made in A.S No.78 of 2004 on the file of District Judge, Perambalur, confirming the Judgement and decree made in O.S No.28/1998, dated 05.02.2004 on the file of the Subordinate Judge, Ariyalur. 2. The appellants herein are the defendants in O.S No.28 of 1998 filed by the respondent herein/plaintiff for the relief of damage.

3. The brief facts of the case are as follows:

The plaintiff had five male child, hence, she approached the Perambalur Government Hospital for birth control operation. Thereafter, on 06.09.1993, she admitted in the said hospital and underwent sterilization operation on 08.09.1993 and discharged on 09.09.1993. Then, she believed that she would not conceive again but the plaintiff conceived and got female



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child on 05.11.1994. Hence, she filed the suit for damages.

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4. The defendants admitted that the plaintiff underwent sterilization at Perambalur Government Hospital. However, After that operation, she must consult the doctor every month but she had not approached the Government Hospital Doctor and she had consultation with private Hospital, thereby, they denied that there was no negligence on their part and claiming that operation was successful.

5. Thereafter, the plaintiff approached the trial Court, where the learned Judge considering the evidence of both sides, framed issues, held that there was medical negligence on the part of the Doctors and directed the defendants 1 to 4 to pay damages Rs.50,000/- with 9 % rate of interest.

6. Aggrieved over the same defendants preferred an appeal before the lower appellate Court in A.S. No.78 of 2004, wherein, the lower appellate Judge independently analysed the evidence and held that there was medical negligence on the part of the defendants, dismissed the appeal as no merits.



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7. Challenging the same the defendants filed an appeal before

WEB.COM this Court with the following questions of law:

(a) Whether the Courts below had erred in not appreciating the fact that the laproscopic birth control operation in itself carries an inherent chance of failure?

(b) Whether the Court below had erred in awarding damages in favour of the plaintiff/respondent especially in view of the fact that the plaintiff/respondent had miserably failed to substantiate the claim of negligence?

(c) Whether the Court below had erred in not appreciating the law laid down by the Apex Court as reported in 2005(4) CTC 627 and 2005(4) CTC 540 wherein the Apex Court has clearly held that the aspect of negligence has to be substantiated before awarding of damages and the failure of a birth control operation would not in itself automatically result in awarding compensation to the party?

8. It is an admitted fact that the plaintiff had five male children.

On 08.09.1993, she underwent laproscopic operation for birth control at the Perambalur Government Hospital. Thereafter, again she conceived and gave birth to child on 05.11.1994.

9. The case of the plaintiff is that operation was not properly conducted and due to negligence of the Doctor, who conducted birth control operation, she gave birth to male child. Hence, she claimed 50,000/- rupees damages with interest. Both the Court below concurrently held that



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defendants 1 to 4 liable to pay compensation as they failed to discharge their duty that there was no medical negligence on their part.

10. The learned counsel for the appellants/defendants submitted that the burden lies on the plaintiff to prove that there was a negligence on the part of the medical officer who conducted sterilization operation. By way of reply, the plaintiff stated that burden lies on the defendant to support her contention she relied ***Judgement in (2014) (8) Mad LJ 728 before the lower Court:***

16. In the case on hand, the contention of the first defendant before the Trial Court is that had the plaintiff was cautious, she could not have become pregnant. It is also admitted by her in cross-examination that she had not given the warnings and precautions to the plaintiff in writing. Therefore, this court is of the view that the burden heavily lies on the Medical Officer to prove that there was no negligence in performing the surgery. It is too much on the part of the Medical Officer to doubt the genuineness of the plaintiff in contending in the written statement that the plaintiff might have joined the fallopian tube with the intention of having one more child. Such a contention made by the first defendant-Medical Officer when the plaintiff had approached for damages alleging medical negligence on the part of the first defendant itself shows her idea of escapism and lethargic approach. It is beyond imagination that the plaintiff could have ventured to join the fallopian tube by undergoing another process of surgery to get pregnated for the purpose of claiming some damages that too by fighting against the medical world for years together.

17. In view of the above discussion, this court is of the view that the courts below have committed error in shifting the burden of



proof on the plaintiff, a folk lady, which certainly vitiates the judgments in challenge and the substantial question of law is answered accordingly. The judgment and decree of both the courts below are liable to be set aside.

11. Further she referred the judgement of this Court in

Dr.Alice George and anothers Vs Lakshmi in 2007 (1) CTC 7 146:

Both the Courts have clearly pointed out that before taking such a view that the plaintiff's case was one in which such pregnancy has occurred and which would fall within 0.05% of the case, a duty was cast upon the defendants to prove that the tubectomy family planning operation by pomeroys method, was done carefully.

11. Therefore, the above referred Judgement support the case of the plaintiff that the burden is on the defendants to prove that there was no medical negligence on their part.

12. Hence the burden is upon the medical officer to prove that operation was done carefully without any negligence. But in the instant case there was no material evidences adduced on the side of the defendants to establish that there was no negligence on the part of the appellants/defendants. So, the Court below rightly held that the Doctors



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failed to discharge their duty and there was negligence on their part which needs no interference from this Court. Hence, the present appeal is dismissed as devoid of merits and the findings of the Trial Court is confirmed. With regard to withdrawal of the amount which is deposited in the Court, the plaintiff is directed to file a separate application and withdraw it. The plaintiff had not appeared before this Court despite the notice was being served on her. Hence, the Jurisdiction Police is directed to serve the copy of Judgement to the plaintiff through the legal aid counsel. No cost. Consequently connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The District Court, Perambalur.
2. The Subordinate Judge, Ariyalur.
3. The Section Officer,
V. R Section.

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& M.P No.1 of 2013

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