

**THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU**

**APPEAL SUIT NO.635 of 2005**

**JUDGMENT:**

Aggrieved by the Judgment and decree dated 17.06.2003 passed in O.S.No.19/2000 on the file of the Court of the Senior Civil Judge, Nalgonda, (hereinafter referred to as 'the trial Court'), the State Government represented by the District Collector, Nalgonda, and Superintendent, Government Head Quarters Hospital, Nalgonda, preferred this appeal on the following grounds:

The Judgment and decree of the trial Court are contrary to law and weight of evidence and probabilities of the case. The appellants have claimed that the trial Court committed error in passing decree in favour of the respondent Nos.1 to 3/plaintiffs and trial Court ought to have seen that Smt.Dandempally Laxmi (hereinafter referred to as 'the deceased') died due to post operational complication but not due to negligence on the part of defendant No.2. They have also pleaded that the trial Court ought to have seen that due care was taken to transfer the patient (the deceased) to Osmania General Hospital,

Hyderabad, when there was post operational complications. On these grounds, the appellants sought for set aside the Judgment and decree which directed them to pay a sum of Rs.3,00,000/- with costs and interest on account of death of the wife of respondent No.1/plaintiff No.1 and mother of respondent Nos.2 and 3/plaintiff Nos.2 and 3, who died after undergone family planning operation conducted by defendant No.2 at Nalgonda.

2. As could be seen from the Judgment of the trial Court and other record, it shows that the deceased, who is the wife of respondent No.1/plaintiff No.1 and mother of respondent Nos.2 and 3/plaintiff Nos.2 and 3, having attracted by the vide publicity given by the Government to undergo family planning operation subjected herself to the said Tubectomy operation on 10.04.1997. Subsequent to the said operation, there developed some complications and as per the medical advise, she was taken to Osmania General Hospital, Hyderabad, where she died on 10.05.1997 while undergoing treatment. Plaintiffs have claimed that the death was due to the negligence on the part of the Doctors, who conducted Tubectomy operation.

They have also alleged that the Doctors conducted operation negligently and caused injury to the intestine of the deceased due to which complications arise and thereby a police complaint was lodged and basing thereon, a case was registered in Crime No.74/1997 for the offence under Section 304A of the Indian Penal Code. The respondents have pleaded that the deceased was hale and healthy and she was aged about 27 years as on the date of death and that she was earning Rs.1,000/- per month by doing tailoring work apart from rendering services to the husband and children. Therefore, they prayed for compensation of Rs.3,00,000/-.

3. The appellants herein refuted the said claim filed written statement stating that there was no such medical negligence and they have taken all the precautions while conducting operations. The patient was suffering from some health issues due to which post operational complications arise and thereby they referred her to Osmania General Hospital, Hyderabad. Therefore, according to the appellants, there was no such negligence on their part and sought for dismissal of the suit.

4. The trial Court framed eight (8) issues as follows:

- 1) Whether deceased Laxmi and her husband forced to obtain their consent and to conduct tubectomy operation on the deceased ?
- 2) Whether the second defendant while operating the deceased negligently caused injuries to the intestines ?
- 3) Whether deceased Laxmi was died of injuries to intestine only ?
- 4) Whether the defendants 1 and 2 are liable for negligence if any committed by second defendant while discharging his duties ?
- 5) Whether deceased Laxmi was earning Rs.1,000/- P.M., by doing tailoring work and rendering service in the house valued at Rs.1,000/- per month ?
- 6) Whether suit is bad for non-joinder of necessary parties ?
- 7) Whether the plaintiffs are entitled for damages claimed ?
- 8) To what relief ?

5. During the trial, respondent No.1/plaintiff No.1 has been examined as PW.1 and marked Exs.A.1 to A.10. Dr.K.Sanjeeva Rao, who is defendant No.2 in the suit, was examined as DW.1 and Dr.K.Prasad Rao was examined as DW.2 and they have marked Ex.B.1 case sheet of the

deceased; Ex.B.2 consent form by wife of PW.1 and Ex.B.3 three receipts passed by PW.1 for receipt of Rs.20,000/-.

6. The trial Court having considered the oral and documentary evidence and after hearing both parties came to a conclusion that the death of the deceased was due to negligence of the Medical Officer, who conducted operation and passed a decree in favour of the respondent Nos.1 to 3/plaintiffs.

7. Now the point for consideration is “Whether the trial Court committed error in passing decree against the appellants, if so whether it is liable to be set aside ?”

8. In order to arrive the said conclusion, the trial Court discussed the oral and documentary evidence placed before it. Even though in the written statement, the appellants herein expressed innocence about the relationship between the parties, the evidence placed before the trial Court through PW.1 and other documents categorically shows that the deceased is the wife of respondent No.1 and mother of respondent Nos.2 and 3. The young lady aged about 27 years undergone Tubectomy surgery in view of the wide publicity given by the Government encouraging

family planning. The appellants herein though claimed that the deceased was suffering from health issues could not have placed any material to substantiate their contention.

9. On the other hand, the evidence placed before the trial Court including the post-mortem report categorically shows that there was negligence on the part of the Doctors while conducting surgery. In the cross-examination of DW.1, he admitted that they have conducted a family planning campaign from 02.04.1997 to 25.04.1997. According to his evidence, the team of three Doctors conducted the operations and they have arranged three tables. There were heavy cases of participants to undergo surgery. It seems DW.1 himself performed operations on one table.

10. Respondent Nos.1 to 3 have claimed that two days after the operation some complications were developed thereby the deceased was referred to Gynecologist and Senior Surgeon, having examined her, advised for sending her to Osmania General Hospital, Hyderabad.

11. As per the statement filed by the defendants before the trial Court, it was submitted that the team of Doctors

conducted 272 sterilization operations at Nalgonda. The appellants/defendants have pleaded that the deceased voluntarily came to the hospital and after some tests she was rejected as her Blood Pressure was abnormal and there was some health issues but the deceased and her husband forced the Doctors to conduct Tubectomy operation. However, this part of their contention was not proved by any other supporting evidence. In view of the death of the lady, it is quite natural for the Doctors to take a stand as if the deceased was suffering from health issues, and they have conducted operation reluctantly. However, this particular claim of the appellants was not proved through any acceptable evidence.

12. As per the evidence of PW.1, it is very clear that the operation was conducted at 03.00 P.M. soon after the operation, the deceased complained severe stomach pain and some of the patients, who have undergone operation were discharged but she was treated as in-patient. Doctors have provided medicines on the next day also on 11.04.1997 and she was asked to take break fast and then they found swollen stomach and she was unable to pass

urine freely and that on 12.04.1997 she was given saline and she was put on catheter i.e., tube applied for free passage of urine. Then, the Medical Officer has advised to take her to Hyderabad. While they were on transit, they found that stools were coming out from the place where the Doctors applied stitches and then she was admitted to Osmania General Hospital, Hyderabad, wherein she died on 10.05.1997.

13. PW.1 claimed that he came to know that intestines were cut during the operation. The trial Court referred the post-mortem examination report wherein it was categorically stated that the Medical Officer, who conducted autopsy made several observations with regard to injuries on the body of the deceased, namely, 1) multiple injection marks on both cubital fosas, 2) surgical drainage wound  $1\frac{1}{2} \times 0.5$  cms, over left flank of abdomen 4 cms and above iliac cryst; 3) surgical drainage wound  $1.5 \times 0.5$  cms over right flank of abdomen 4 cms, above iliac cryst; 4) surgical laprotamy incision of 23 cms; and 5) two small perferative wounds. Similarly injuries were also reflected in the post-mortem report.

14. As per the case sheet, it shows that the patient was admitted on 10.04.1997 and it was also mentioned therein that the patient complained of palpitation and giddiness and pain on either side of the stomach. The trial Court did not accept the other evidence of DW.1. DW.1 is not able to substantiate their claim. There is no dispute about the admission of the deceased into the hospital for Tubectomy operation. There is no dispute about the post operational complications to the deceased, who was admitted in Osmania General Hospital, Hyderabad. There is no dispute about her death one month after the said operation. The trial Court having discussed the entire oral and documentary evidence placed before it, came to a correct conclusion.

15. The appellants herein in the grounds of appeal have claimed that there is no negligence on the part of defendant No.2 and the death was due to post operational complications. It may be true that when she complained some complications she was referred to Osmania General Hospital, Hyderabad, but it is not safe to believe in the absence of any evidence that the deceased was suffering

from other health issues. Had it been a truth, the Doctors could not have proceed with the operation thereby it seems this is only a vague ground to avoid the payment of compensation. Therefore, the trial Court rightly awarded a meager amount of Rs.3,00,000/- on account of the death of the young lady, whose death had a great impact on the family. Therefore, there are no grounds to set aside the Judgment and Decree of the trial Court, and the appeal is liable to be dismissed.

16. As can be seen from the proceeding sheet while granting stay of the operation of the trial Court Judgment, this Court directed the appellants herein to deposit half of the decretal amount with interest and costs within a period of six weeks from 18.10.2015. It is not known whether the said amount is paid or not, if the amount is paid, the appellants shall pay the balance amount with costs and interest within one month from the date of this Judgment. If the said amount has not been paid, the appellants shall deposit the compensation along with interest and costs within four (4) weeks from the date of this Judgment.

17. In the result, the appeal is dismissed.

Consequently, miscellaneous applications pending, if any shall stand closed. No costs.

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**JUSTICE SAMBASIVA RAO NAIDU**

**DATED 14.10.2022**

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