



S.A.No.651 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.651 of 2010
and M.P.No.1 of 2010

The State of Tamil Nadu
rep. by the Collector of Cuddalore District,
Cuddalore. .. Appellant

Vs.

1.Saroja,
2.Dr.Ezhumalai ..Respondents

PRAYER : Second Appeal has been filed under section 100 of Civil Procedure Code against the Judgment and decree dated 28.11.2005 made in A.S.No.103 of 2004 on the file of the District Judge, Cuddalore, insofar as confirming the judgment and decree dated 06.04.2004 made in O.S.No.121 of 1999 on the file of the Subordinate Judge, Panruti.

For Appellant : Mr.C.Sathish
Government Advocate.

For Respondents :
For R1 : Mrs.R.Meenal
For R2 : No appearance



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S.A.No.651 of 2010

JUDGMENT

The Second Appeal has been filed against the Judgment and decree dated 28.11.2005 made in A.S.No.103 of 2004 on the file of the District Judge, Cuddalore, insofar as confirming the judgment and decree dated 06.04.2004 made in O.S.No.121 of 1999 on the file of the Subordinate Judge, Panruti.

2. The State of Tamil Nadu is appellant herein and the second defendant before the Trial Court. The respondents 1 and 2 are the plaintiff and first defendant, respectively, before the Trial Court.

3. For the sake of convenience, the parties will be referred to the same litigative status as before the Trial Court.

4. The learned Government Advocate who is appearing on behalf of the second defendant would submit that the plaintiff has filed the suit for compensation on account of the medical negligence



S.A.No.651 of 2010

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committed against the plaintiff's son by the first defendant/Doctor.

He would also submit that the second defendant was arrayed as an employer of the first defendant.

5. According to the averments made in the plaint, the deceased Ramu was admitted on 19.05.1998 in the Government Hospital at Cuddalore for stomach pain. He was diagnosed by the first defendant for illness of appendicitis. The plaintiff further submit that, in pursuance of the same, the first defendant carried out operation to the deceased. However, after operation, the health condition of the deceased become deteriorated. Hence, the deceased was shifted to JIPMER Hospital, Pondicherry. Wherein, they came to know that deceased Ramu was not suffering from appendicitis, but, wrong operation was carried out by the first defendant, which resulted in formation of pus in the intestine and the same caused death of Ramu. Therefore, the plaintiff claimed a sum of Rs.2 lakhs as damages for medical negligence.



S.A.No.651 of 2010

WEB COPY

6. This suit was resisted by the Government/second defendant by contending that there was no medical negligence, and that the operation was conducted after diligent diagnosing and also after getting second opinion. Thereafter, consent for surgery was also obtained. It is the contention of the second defendant that all the precautions were made for the successful operation of the victim. It is the submission of the Government/second defendant that upto 25.05.1998, the health condition of deceased Ramu was normal. However, only due to the shifting of deceased Ramu from Government Hospital, Cuddalore to JIPMER Hospital, Pondicherry, has caused some dent in his health. Therefore, it is the submission of the Government/second defendant that their Doctor correctly diagnosed and has given proper treatment. Therefore, submitted that there was no medical negligence on their part. Hence, the defendants prayed for the dismissal of the suit.



S.A.No.651 of 2010

WEB COPY

7. Before the Trial Court, the plaintiff examined herself as P.W.1 and three documents have been marked as Exs.A1 to A3. On the side of defendants, the first defendant examined himself as D.W.1 and one document was marked as Ex.B1. As the Court Witness one Dr.R.N.Sahoo was examined, and as a Court document, a medical report of deceased Ramu issued by JIPMER Hospital was marked as Ex.C1.

8. After considering the materials on record, oral and documentary evidence, the Trial Court decreed the suit and awarded the compensation of Rs.1 lakh.

9. Aggrieved by the same, both the defendants have preferred an appeal in A.S.No.103 of 2004, before the District Judge, Cuddalore. But the first appellate Court, after elaborately reappraising the either materials on record, has confirmed the findings of the Trial Court. However, the first appellate Court



S.A.No.651 of 2010

reduced the compensation to Rs.85,000/-. Aggrieved by the same, the second defendant is now before this Court by filing this Second Appeal.

10. The Government Advocate would vehemently submit that the deceased was treated properly, and that a team of Doctors were involved in diagnosing and treating the deceased. The Government Advocate would also contend that even the Doctor of JIPMER Hospital has not spoken about any medical negligence. It is the further submission of the learned Government Advocate that the operation was conducted by the second defendant's hospital only after taking all tests and getting opinion from the specialist doctors. It is the further specific submission of the learned Government Advocate appearing for the appellant that there is no nexus between the operation conducted by the first defendant/Doctor, and the death of the victim. It is also the submission of the learned Government Advocate that there are no proof available on record as to the alleged



S.A.No.651 of 2010

WEB COPY

medical negligence. Hence, the learned Government Advocate would pray to allow this second appeal.

11. Per contra, the learned counsel for the first respondent vehemently submit that there are no substantial questions of law arising in this matter, as both the Trial Court and the first appellate Court have considered the various aspects of the documents and the evidences and therefore, the learned counsel for the first respondent would submit that the proposed substantial questions of law does not arise in this matter. Therefore, she prays for dismissal of the second appeal.

12. I have given my anxious consideration on either side submissions.

13. The suit was filed on account of the medical negligence by the 1st defendant. The Trial Court has arrived at the conclusion that



S.A.No.651 of 2010

there was medical negligence and awarded compensation by way of damages to the tune of Rs.1 lakh. While perusing the order of the first appellate Court, has very much relied on the evidence of C.W.1/Dr.R.N.Sahoo and also his report which was marked as Ex.C1.

14. Dr.R.N.Sahoo was a medical officer in the JIPMER Hospital, where further treatment was given to the deceased. According to the written statement of the appellant herein, as on 24.05.1998, the health condition of the deceased Ramu was normal, and it was only because of shifting of the deceased from Government Hospital, Cuddalore to JIPMER Hospital, Pondicherry, his health condition became deteriorated. Therefore, contended that there was no medical negligence.

15. However, according to the evidence of C.W.1, this Court could be able to find a medical negligence on account of non



S.A.No.651 of 2010

diagnosing a hole in the intestine. It can be seen from the evidence of C.W.1 that such diagnose was made by the JIPMER Hospital Doctors and such ailment was addressed by carrying out an operation on 25.05.1998.

16. The first appellate Court has relied upon the evidence of C.W.1 and has recorded a finding of fact about negligence of the Government Hospital, Cuddalore, as the JIPMER Hospital, Pondicherry had removed pus of eight litres volume from the deceased's intestine within a day of discharge, and there was also blood in the stool. The above factum was mainly relied by the first appellate Court and found that there was medical negligence against the appellant as well as the second respondent herein. This Court could not find any material to interfere with such well considered and well merited finding of the first appellate Court.

17. It is also relevant to mention that, the first appellate Court



S.A.No.651 of 2010

has rightly reduced the amount of compensation from Rs.1,00,000/- to Rs.85,000/- after following the principles of multiplier method as per the second schedule appended to the Motor Vehicle Act, 1988. Therefore, this Court is of the indubitable opinion that the judgment and decree of the first appellate Court is well merited. From the submission of the learned Government Advocate, this Court could not find any substantial questions of law for admitting this second appeal. In other words there are no substantial questions of law arising in this matter.

18. In the result, the Second Appeal is dismissed by confirming the judgment and decree dated 28.11.2005 passed by the District Judge, Cuddalore in A.S.No.103 of 2004. Connected Miscellaneous Petition is closed. There shall be no order as to costs.

19.10.2023

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S.A.No.651 of 2010

C.KUMARAPPAN,J.

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To

1. The District Judge, Cuddalore,
2. The Subordinate Judge, Panruti.
3. The Section Officer, V.R.Section, High Court, Madras.

S.A.No.651 of 2010

19.10.2023