



W.P.(MD)No.9596 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.9596 of 2021
and
W.M.P.(MD).No.13526 of 2023

B.Lekhsmi

... Petitioner

Vs

- 1.The Principal Secretary to Government,
Health and Family Welfare Department,
St.George Fort,
Chennai -600 009.
- 2.The Director,
Medical and Rural Health Services,
DMS Complex,
361, Anna Salai, Chennai – 600 018.
- 3.The District Collector,
Kanyakumari District,
Nagercoil.
- 4.The Joint Director of Health Services,
Kottar,
Nagercoil.
- 5.The Deputy Director of Health Services,
Krishnan Kovil,
Nagercoil.



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6.Dr.S.Rajesh Sathya
Medical Superintendent,
CSI Mission Hospital,
Neyyoor, Kanyakumari District

7.Leethial Selvi,
Obstetrician and Gynaecologist,
Chief Medical Officer,
CSI Mission Hospital,
Nagercoil.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to pay a compensation of Rs.25,00,000/- to the petitioner and further directing respondents 1 to 5 to take appropriate action against the 6th and 7th respondents

For Petitioner : Mr.C.T.Perumal

For R-1 to R-5 : Mr.A.K.Manikkam,
Special Government Pleader

For R-6 & R-7 : Mr.F.Deepak

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the respondents to pay compensation of a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the petitioner and to take action against the sixth and seventh respondents based on the representation given by the petitioner in this regard.



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2. Heard the learned counsel on either side.

3. The case of the petitioner is that she was already having two children and hence, she opted for sterilization operation which was done in the sixth respondent Hospital. This operation was performed by the seventh respondent. The grievance of the petitioner is that in spite of undergoing the sterilization operation, she became pregnant and it became complicated and it was diagnosed as “Ectopic Gestation Fallopian Tube”. In view of the same, it resulted in an abnormal pregnancy causing health complications and the petitioner was forced to incur heavy medical expenditure. The petitioner also delivered the child. It is under these circumstances, a representation was made seeking for compensation for the negligence caused by the sixth and seventh respondents. Since no action was taken, the present Writ Petition has been filed before this Court.

4. The fourth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:



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“6. It is submitted that the petitioner underwent 1st Sterilization Operation LSCS on 30.07.2014 at 6 respondent Hospital which is approved by the Deputy Director of Medical Rural Health Services and Family Welfare Kanyakumari District the fifth respondent herein. After four years Medical Complication in the petitioner’s health. In this regard the Government of India had issued a manual for Female Sterilization 2013 and it reveals that Female Sterilization greatly reduces the risk of Ectopic Pregnancy. Ectopic pregnancies are very rare among women who have had a sterilization procedure The rate of ectopic 6 per 1000 women per year

7) With reference to the para 7 of the affidavit, it is submitted that female sterilization is very effective and it is intended to be permanent. But it is not 100% effective as there is very rare chance of becoming pregnant even after the sterilization 5 women out of 1000 become pregnant with a year after the family planning surgery and this risk remain beyond the first year until the women reaches the menopause stage. Presently occurs to the women after sterilization when the fallopian tube open spontaneously. But



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in this case, the petitioner has become pregnant after 4 years and also pregnancy occurs in tube itself. (Ectopic) Therefore, there is no negligence on the part of the sixth respondents hospital in performing the surgery.”

5. The short issue that arises for consideration is as to whether the sixth and seventh respondents can be made liable for the pregnancy of the petitioner even after the sterilization operation was conducted on the petitioner. The issue in hand is squarely covered by the Judgment of the Hon'ble Apex Court in the case of ***State of Punjab Vs. Shiv Ram and Others*** reported in ***(2005) 7 SCC 1*** and the relevant portions in the Judgment are extracted hereunder:

“25. We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to satisfy Bolam's



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test. So also, the surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100 % exclusion of pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee.

26. The cause of failure of sterilization operation may be obtained from laparoscopic inspection of the uterine tubes, or by x-ray examination, or by pathological examination of the materials removed at a subsequent operation of re-sterilisation. The discrepancy between operation notes and the result of x-ray films in respect of the number of rings or clips or nylon sutures used for occlusion of the tubes, will lead to logical inference of negligence on the part of the gynaecologist in case of failure of sterilisation operation. (See: Law of Medical Negligence and Compensation by R.K. Bag, Second Edition, p.139)

27. Mrs. K. Sarada Devi, the learned counsel appearing for the plaintiff-respondents



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spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to sub-section (2) of Section 3 provides

"Explanation II. _____ Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman."

29. And that provides, under the law, a valid and legal ground for termination of pregnancy. If



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the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.

30. The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.”

6. It is clear from the above Judgment that merely because a woman had undergone a sterilization operation and thereafter, she became pregnant and delivered the child, the operating surgeon or the Hospital cannot be held liable for compensation on account of the unwanted



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pregnancy or the unwanted child. The Hon'ble Apex Court dealt with in detail the various reasons for the failure of the sterilization operations. It was noted that the methods of sterilization that are so far known to the medical science are not 100% safe and secure. In spite of the sterilization operation being performed, the woman can become pregnant due to natural causes. Therefore, the Hon'ble Apex Court held that merely because a sterilization operation had taken place, that is not an assurance that the women will never become pregnant and such 100% assurance cannot be given by any one.

7. In the instant case, the only grievance of the petitioner is that the sterilization operation was performed by the sixth and seventh respondents and in spite of the same, she became pregnant and it resulted in some complications and as a result, the petitioner had incurred huge expenditure. This cannot be a cause of action for directing the sixth and seventh respondents to pay compensation to the petitioner in the light of the Judgment of the Hon'ble Apex Court in Shiv Ram case referred supra.



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8. In the result, this Writ Petition stands dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

To

1.The Principal Secretary to Government,
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361, Anna Salai, Chennai – 600 018.

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