



W.P.(MD)No.21669 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.21669 of 2021

V.Christalmajini

... Petitioner

Vs.

- 1.The Principal Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai -600 009.
- 2.The Director,
Directorate of Health and Family Planning,
Chennai-600 018.
- 3.The District Collector,
Kanyakumari District,
at Nagercoil.
- 4.The Joint Director,
Health and Family Welfare Department,
Nagercoil,
Kanyakumari District.
- 5.The Deputy Director,
Medicines, Rural Development and Family
Welfare Department,
Nagercoil,
Kanyakumari District.



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6. The Government Duty Doctor,
Government Hospital,
Colachel,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents 1 to 5 to consider the petitioner's representation dated 16.04.2021 and to direct the respondents 1 to 5 to take appropriate action as against the 6th respondent and to provide compensation of Rs.10,00,000/- (Rupees Ten Lakhs) for the wrong family planning done by the 6th respondent by his medical negligence and also direct the 1st respondent to bear the educational expenses of the petitioner's 3rd daughter within the time stipulated by this Court.

For Petitioner : Mr.M.R.Sreenivasan

For R-1 : Ms.D.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition has been filed for the issue of writ of mandamus seeking for compensation from respondent Nos.1 to 5 on the ground that even after undergoing the family planning operation, the petitioner gave birth to the third child and therefore, there was negligence on the part of the sixth respondent.



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2. The grievance of the petitioner is that she already had two female children and hence, decided to undergo sterilization operation. Accordingly, surgery was also performed by the sixth respondent in the year 2015. Even thereafter, the petitioner conceived and she gave birth to the third child. It is under these circumstances, the petitioner has sought for payment of compensation.

3. The fifth respondent has filed a counter affidavit and has taken a stand that as per the Scheme named as “Family Planning Indemnity Scheme, 2013”, the petitioner is entitled for a sum of Rs.30,000/- (Rupees Thirty Thousand only).

4. In the considered view of this Court, the issue involved in the present Writ Petition is squarely covered by the Order of this Court in the case of ***B.Lekshmi Vs. The Principal Secretary to Government, Health and Family Welfare Department, St.George Fort, Chennai-600 009 and others*** in ***W.P.(MD).No.9596 of 2021***, dated 10.11.2023 and the relevant portions in the order are extracted hereunder:



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*“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 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



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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 placed reliance on a two-Judge Bench decision of this Court in State of Haryana & Ors. v. Santra, wherein this Court has upheld the decree awarding damages for medical negligence on account of the lady having given birth to an



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unwanted child on account of failure of sterilization operation. The case is clearly distinguishable and cannot be said to be laying down any law of universal application. The finding of fact arrived at therein was that the lady had offered herself for complete sterilization and not for partial operation and, therefore, both her fallopian tubes should have been operated upon. It was found as a matter of fact that only the right fallopian tube was operated upon and the left fallopian tube was left untouched. She was issued a certificate that her operation was successful and she was assured that she would not conceive a child in future. It was in these circumstances, that a case of medical negligence was found and a decree for compensation in tort was held justified. The case thus proceeds on its own facts.

28. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In 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



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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 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.



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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 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*



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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."

5. In view of the above, the relief sought for by the petitioner cannot be granted by this Court and it is left open to the petitioner to receive the sum of Rs.30,000/- (Rupees Thirty Thousand only) from the fifth respondent under the Scheme.

6. This Writ Petition is disposed of accordingly. No costs.

21.11.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg



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