

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1523-2002 (O&M)
Date of decision: 07.02.2023

State of Haryana and another

...Appellants

V/S

Smt. Kaushalya Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.S.Mann, Additional A.G., Haryana.

Mr. Sanjiv Gupta, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendants (State and its officers) are in second appeal before this Court assailing learned trial Court judgment and decree dated 31.08.2001, as upheld by learned First Appellate Court vide its judgment and decree dated 14.12.2001, allowing the suit for damages to the tune of Rs.1,05,000/- against the defendants.

3. Briefly stated, facts as noticed by Courts below are that plaintiff Smt. Kaushalya Devi, having four children and working as a labourer opted for Tubectomy at a Family Planning camp organized by defendant in Community Health Centre, Mullana on 18.06.1992. Her operation was performed and an assurance was meted out that she would thereafter not conceive any child. The couple lived in penury and they did not want to extend their family. Notwithstanding, the operation, plaintiff yet again conceived and gave birth to a female child on 27.09.1993. She also suffered terrible pain and mental agony

during pregnancy and even during birth of the child. Her Tubectomy was clearly a failure caused by sheer negligence of State Medical Officers. Plaintiff had to incur the expenses of her unplanned child for her education and marriage. Compensation of Rs.3 Lakh was thus claimed by way of civil suit for damages.

4. Upon notice, defendants contested the suit and filed joint written statement taking up a plea that the plaintiff had voluntarily undergone sterilization. It was *inter alia* pleaded that laparoscopic tubectomy was having chances of failure up to 2.1%. There was thus no negligence on the part of defendant. It was pleaded that the plaintiff herself was responsible for continuing with her unwanted pregnancy when she had the option to terminate the same.

5. Based on the rival pleadings, following issues were framed:

- “1. Whether defendant No.3 was negligent in conducting the operation? OPP*
- 2. Whether the plaintiff is entitled to any compensation if so, to what amount? OPP*
- 3. Whether the plaintiff is stopped by her own act and conduct to file the present suit? OPD*
- 4. Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2 were decided in favour of the plaintiff. Issue No.3 was decided against the defendants. Consequently, suit of the plaintiff for damages was decreed with costs and she was entitled to Rs.1,05,000/- as damages from the State and its functionaries.

8. Learned First Appellate Court dismissed the appeal of defendants resulting in Regular Second Appeal by defendants before this Court.

9. In its judgment, learned First Appellate Court, *inter alia*, has observed as below:

“17. *Rather the respondent Smt. Kaushalya Devi (PW1) already having large family to support and care for, had to undergo travail and trauma of another unwarranted pregnancy. She would further be required to rear and look after this child and cannot shelve her responsibility on this count.*

18. *Argument of learned Govt. Pleader that she could have got her unwanted pregnancy terminated is neither here nor there. There are moral and ethical issues involved; these should not be raked up the termination of pregnancy is an issue which in addition to its medical content has also familiar, ethical and social aspects. In any case, her decision not to get said pregnancy terminated, cannot be construed to her prejudice.*

19. *From the totality of circumstances as discussed above, the learned Lower Court referring to authority reported as Punjab State Vs. Surinder Kaur 2001 (1) CCC 122 (P&H) had rightly held that the appellants/defendants to be negligent in conducting the operation and appellant/defendants No.2 and 3 to be vicariously liable. Reference may also be made to State of Haryana and others Vs. Santra reported as 2000 ACJ 1188 (SC).*

20. *As has already been noticed there is no volitional submission to the contents of consent form (ex. D1), which were not even explained to her. It would also be important to note that a clear understanding in the shape of assurance was held out to her that she will not have “any more children”. It is with this mental framework that she had gone in for sterilisation operation. There is thus no estoppels against the respondents.*

21. *Findings on issue No.3 having been rendered rightly so do not call for any interference.*

22. *Consequent upon affirmation of findings on issues No.1 to 3, findings on issue No.4 also need affirmation and it is so done.*

23. *As a sequel to the discussion as made above, affirming the impugned judgment and decree, the appeal is dismissed with costs.”*

10. I have heard the learned counsel for parties and perused the judgments of both the Courts below.

11. On perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. No new argument has been canvassed by the learned State counsel and there has been mere repetition of the stand taken below, which as stated has been rightly negated.

12. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.
13. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.
14. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.
15. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
16. Pending application/s, if any, shall also stand disposed of.
17. No order as to costs.

(ARUN MONGA)
JUDGE

February 07, 2023

Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No