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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA No. 1006 of 1994 (O&M)****DATE OF DECISION : 12.04.2023****Govt of Punjab through Chief Secretary and others ...Appellants****Versus****Krishna Devi****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Ms. Anju Sharma Kaushik, DAG, Punjab,
For the appellants.

Ms. Gurpal Kaur Turka, Advocate,
for the respondent.

ARUN MONGA, J (ORAL)

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

2. State of Punjab and its officials are in second appeal against
the First Appellate Court judgment and decree dated 23.08.1993, whereby
suit filed by the plaintiff for damages to the tune of Rs.1,25,000/- as an
indigent person was decreed by reversing the trial court judgment and
decree dated 14.12.1992.

3. Brief factual narrative first, as noticed by learned Courts
below. Plaintiff underwent Family Planning operation on 05.03.1983 at
Primary Health Centre, Harpalpur. Certificate in this regard was issued to
her. Despite the said operation, she conceived and a female child was born
on 25.09.1985. Notice under Section 80 CPC for damages to the tune of

Rs.1,25,000/- was also issued to the defendants but in vain. Hence, the suit.

4. Upon notice, respondent/appellants herein appeared and filed written statement taking preliminary objections that suit is bad for non-joinder of necessary parties, no valid notice under Section 80 CPC was served, suit is not maintainable in present form.

4.1 On merits, it was admitted that laparoscopic tubectomy operation was conducted on the plaintiff on 05.03.1983 under the supervision of Senior Medical Officer and with her consent. It was further pleaded that petitioner should have approached the SMO well in time for termination of her pregnancy.

4.2 Replication was filed wherein all the averments as contained in the plaint were reiterated and objections taken in the written statement were controverted.

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

- “(1) Whether the plaintiff gave birth to a daughter on 25.09.1995 after having undergone the tubectomy operation ? OPP*
- (2) Whether the daughter was born due to the negligence of the defendants ? OPP*
- (3) Whether the plaintiff is entitled to recover Rs.1,25,000/- as damages ? OPP*
- (4) Whether the suit is bad for non-joinder of necessary parties ? OPP*
- (5) Whether the valid notice under Section 80 CPC was not served upon the defendants before filing the present suit? OPP*
- (6) Whether the plaintiff has no cause of action to file the suit ? OPP*
- (7) Whether the suit is not maintainable in the present form? OPP*

(8) *Relief.*

6. The parties to 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 to 3, being inter-linked were taken up together. Issue No.1 was decided in favour of plaintiff and against defendants whereas Issues No.2 and 3 were decided against the plaintiff and in favour of defendants. Issues No.4, 6 and 7 were decided against the defendants, while Issue No.5 was decided in favour of the plaintiff. Consequently, suit of the plaintiff was dismissed.

8. Aggrieved, plaintiff/respondent filed an appeal which was allowed by learned First Appellate Court with costs. Her suit was decreed with costs of Rs.35,000/- along with interest @ 6% per annum from the date of filing of suit i.e 25.01.1986 till its realization. It was also ordered that out of Rs.35,000/-, a sum of Rs.10,000/- with proportionate interest shall be paid to plaintiff-Krishna Devi and remaining Rs.25,000/- shall be deposited in the name of baby Jaswinder Kaur in the shape of fixed deposit, initially for a period of five years and it shall be renewed from time to time till she attains majority. Out of monthly interest on fixed deposit, 2/3rd shall be paid to the mother and next friend of the child to be spent on the welfare of child. The remaining 1/3rd of monthly interest shall continue augmenting principal and no withdrawal from the principal was permitted without prior permission of Court.

8.1 Against the said reversal of the trial court judgment and decree, respondent-State of Punjab and others are now in instant second appeal.

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

10. It would be apposite here to notice the relevant part of judgment of learned first Appellate Court which is as under:

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10. The submission of the respondents in the fore-front is that even if the tubectomy operation performed by them had failed and the appellant had conceived, they were not liable. It is stated by them that an option was open for the appellant, to go in for the medical termination of pregnancy which was permissible under Section 3 of the Medical Termination of Pregnancy Act, 1971. But, this appears to be adding insult to injury, and offering misplaced, and entirely perverted justification for the acts of omission and commission of the respondents. The medical termination of pregnancy may be legal and permissible under the Act. But the question arises, whether the appellant, or for that matters, any other lady, could be compelled, to undergo the same. My considered opinion, on this point is that she could not be compelled to go in for the medical termination of pregnancy. Atleast, no law or authority has been cited at the bar, in support of the contention of the ld. Govt. Pleader that under the given facts and circumstances of this case, the appellant could be compelled to go in for the medical termination of pregnancy. Therefore, this contention of the ld. Govt. Pleader must be repelled.

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14. It is rightly submitted by the ld. counsel for the appellant, that this is a case of res ispa loquitur. The respondents have admitted that tubectomy operation was conducted on the appellant, on 5.3.83, and that she had delivered a female child on 25.9.85. Therefore, no comments are necessary. From these circumstances, the gross negligence on part of the Medical Officer, who performed tubectomy on the appellant is patent, or in the alternative, he lacked the requisite skill which again amounted to some genre of negligence on his part. Therefore, whatever view of the matter may be taken, the respondents are liable through and through.

15. *The liability of the doctors, in the performance of their duties has been examined, in a number of reported cases. Some of these authorities are : “Laxman Balkrishana Joshi vs. Trinibak Bapu Godbole, AIR 1969 SC 128, Ram Behari Lal vs. J.N. Srivastava AIR 1985 MP 150 and T.T.Thomas vs. Elise AIR 1987 Ket. 52.*

16. *The standard of degree of skill and care required by a doctor is laid down in Halsbury Laws of England, Volume 26 P17 as under :*

“The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the highest, nor a very low degree of care and competence judged in the light of the particular circumstances of each case, is what law requires. A person is not liable in negligence because some one else of better skill and knowledge would have prescribed different treatment or operated in a different way, nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, although a body of adverse opinion also existed among medical men.”

17. *As demonstrated above, this is a case of res ipsa loquitor. Therefore, the onus has shifted on to the respondents to prove that the operating Surgeon had used the above stated degree of skill and care while performing tubectomy on the appellant. But they have led no expert evidence on this point. Even the concerned surgeon has not been examined in the witness box to affirm on oath that he had applied the above indicated degree of skill and care. No reason is explained for this lapse. Therefore, a strong presumption must be drawn against them.”*

11. On perusal of impugned judgments, my considered opinion is that the submissions made before the 1st first appellate court were duly dealt with and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree.

12. To my mind, judgment under challenge is rendered after due and correct appreciation of record including the evidence adduced by the parties.

13. Contentions raised before me are that :

(a) The respondent had given written consent for her tubectomy at her own risk and responsibility and, therefore, the appellants were not liable to pay any compensation;

(b) If the respondent had conceived after the tubectomy, she could legally undergo medical termination of her pregnancy.

14. Wholesome view has been taken by learned first Appellate Court on both counts, as aforesaid. Merely because the respondent had given written consent for tubectomy at her own risk and responsibility would not therefore, absolve the appellant of liability to pay any compensation for the negligence of doctor who performed the operation. Further, appellants cannot escape their liability because respondent could, but did not get her pregnancy terminated. The aforesaid contentions reiterated before me are, therefore, rejected.

15. 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 100 of the Civil Procedure Code.

16. Something more now. The plaintiff/respondent had claimed a modest compensation of Rs. 1,25,000/- for unwanted birth of a female child. To my mind, compensation of Rs.35,000/- awarded by learned first Appellate Court is too low. However, as there is no appeal or counter-claim filed by plaintiff/respondent, amount of compensation cannot be enhanced in defendants' appeal.

17. As an upshot of my preceding discussion, appeal is dismissed with judgment under appeal is upheld with modification that entire decretal amount with interest @ 6% from the date of filing the suit till payment, as awarded by learned First Appellate Court, be disbursed to plaintiff/respondent in lump sum within two months of her approaching the appellants with a web print of this judgment, failing which appellants shall pay additional penal interest @ 3% from the date of filing suit till payment.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

APRIL 12, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No