

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-4537-2004(O&M)

Date of decision:-15.2.2023

State of Haryana through Collector, Kaithal and others

...Appellants

Versus

Smt.Simar Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Karan Jindal, Assistant Advocate General, Haryana
for the appellants.

Mr.Rakesh Nagpal, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Smt.Simar Kaur, an indigent person after being allowed to sue as such, had brought a suit against defendants i.e. State of Haryana through Collector, Kaithal, Civil Surgeon, General Hospital, Kaithal, Dr.Satbir Chaudhary, Surgeon,General Hospital, Kaithal and Director, Health Services, Haryana, praying for grant of Rs.5 lakhs with interest @ 2% per month by way of damages alleging of failure of her family planning operation due to negligence and fault of the defendants.

2. As per the version of the plaintiff, she had five minor

children i.e. three daughters and two sons; her husband is a poor truck driver having meagre income; she got herself operated upon in General Hospital, Kaithal on 22.3.1994 for tubectomy operation; that operation was performed by defendant No.3 – Dr.Satbir Chaudhary, Surgeon, General Hospital, Kaithal, however, despite undergoing that operation the plaintiff conceived and she gave birth to a female child on 7.4.1995.

According to the plaintiff she and her husband are not in a position to look after the new born child on account of poverty and already having five children; she has suffered mental agony and physical pain on account of negligence and carelessness on the part of defendant No.3, who had performed the tubectomy operation, which had failed. According to the plaintiff, she had served notices upon the defendants including one under Section 80 CPC before filing of the suit to make necessary payment but to no effect, as such, she filed the suit in question.

3. On being given notice of the suit, defendant Nos.1, 2 and 4 put in appearance, whereas defendant No.3 did not appear despite service, as such was proceeded against ex-parte.

Defendant Nos.1, 2 and 4 filed a joint written statement contesting the suit raising various legal objections, on merits contending that the plaintiff had given her consent on the application form before the operation was performed upon her, which was to the effect that in case of failure of the operation, the operating surgeon or hospital authorities would not be held responsible by the plaintiff or her relative; the defendants submitted that the plaintiff could have got her pregnancy terminated, when she came to know that she had conceived a child despite

undergoing operation. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for Rs.5 lacs with interest at the rate of Rs.2% as damages on account of failure of her family planning operation due to the fault of the respondents? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no cause of action to file the present suit? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the suit of the plaintiff is estopped from for filing the present suit by his own act and conduct? OPD.
6. Relief.

5. The parties were afforded opportunities to lead evidence in support of their respective claims.

6. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Sr.Divn.), Kaithal decided issue No.1 in favour of the plaintiff and against the defendants; issues No.2 to 5 were disposed of against the defendants. As a collective effect of finding on the issues, the trial Court vide judgment and decree dated 9.12.2003 decreed the suit of

the plaintiff for damages to the tune of Rs.1,25,000/- with costs and interest at the rate of 12% per annum from the date of filing of the suit till its actual realization, payable by the defendants jointly and severally. The plaintiff, who had filed the suit as an indigent person was asked to affix ad valorem Court fees on Rs.1,25,000/- amounting to Rs.9,370/- in terms of Order XXXIII Rule 10 CPC.

7. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Kaithal, which was assigned to Additional District Judge-I, Kaithal, who vide judgment and decree dated 8.9.2004 dismissed the appeal with a modification decreeing the suit of the plaintiff for damages to the tune of Rs.1,25,000/- with cost and interest @ Rs.9% per annum from the date of filing of the suit till realization. In that way, interest @ 12% granted by the trial Court on damages of Rs.1,25,000/- was reduced to 9%, otherwise the judgment and decree passed by the trial Court were affirmed.

8. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court, notice of which was issued to the respondents and Respondent No.1 – Plaintiff has put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. In this case the defendants do not dispute that the plaintiff Smt.Simar Kaur had undergone a tubectomy operation at General Hospital, Kaithal on 22.3.1994 performed by Dr.Satbir Chaudhary, Surgeon, General Hospital, Kaithal. It is also established on record that

said operation has failed inasmuch as despite undergoing that operation, the plaintiff had conceived again and given birth to a female child on 7.4.1995. As per the version of the plaintiff, this so happened on account of negligence and carelessness in performance of operation by Dr.Satbir Chaudhary, whereas according to the defendants before performing the family planning operation, the plaintiff was informed about its failure rate and the plaintiff had got that surgery performed voluntarily and she was not compelled to do so by the defendants.

11. Both the Courts below on proper analysis of evidence in light of the pleadings of the parties in view of the settled legal position have returned the finding that there was negligence on the part of defendant No.3 Dr.Satbir Chaudhary, who had performed the family planning operation upon the plaintiff. The plea taken by the defendants that if plaintiff had conceived despite having undergone tubectomy operation, she could have got the foetus aborted was considered and rejected by the Courts below finding that it was not a ground to deny damages to the plaintiff. Both the Courts below relying upon the law laid down on the subject by the Apex Court and by this Court had found the plaintiff, who gave birth to a female child after tubectomy operation, entitled to claim damages to enable her to bring up the child at least till she attained puberty. The plaintiff having put her thumb impressions on the consent form containing a recital that in case the operation was not successful, she could not claim any damages, was not found to be ground to deny damages to the plaintiff.

12. Learned counsel for the respondent No.1 has referred to

judgments *Smt.Ram Kali Versus State of Haryana, 2002(1) RCR(Civil)278* passed by this Court; *State of Haryana Versus Smt.Santra, 2000(2) RCR(Civil) 739* by the Apex Court wherein it was observed that every doctor, who enters into the medical profession has a duty to act with a reasonable degree of care and skill as a implied undertaking and breach of any such duties may give a cause of action for negligence and the patient may be entitled to recover damages from the doctor.

13. The judgments and decrees passed by the Courts below are quite detailed and well reasoned, based on proper appraisal of evidence and correct interpretation of law, which do not call for any interference.

14. No substantial question of law arises in this appeal.

15. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

15.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No