

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

RSA-2368-2004(O&M)

Date of decision:-3.2.2023

State of Haryana and others

...Appellants

Versus

Kumar Pal and another

...Respondents

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

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

Mr.Rajinder S.Rana, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Kumar Pal and his wife Smt.Jagwati, both residents of village Darana, Post Office Hassanpur, District Faridabad had brought a suit against defendants i.e. Medical Officer/Incharge, Civil Dispensary, Hodal, Faridabad, Secretary/Ministry of Health, Government of Haryana, Chandigarh, Director, Health Services, Haryana, Chandigarh, Chief Medical Officer/Civil Surgeon, District Faridabad and State of Haryana through Collector/Deputy Commissioner, Faridabad, claiming damages by way of compensation.

2. Shortly put, the case of the plaintiffs is that the plaintiffs,

who are husband and wife were having two daughters and a son; thereafter they did not desire to have any further child, as such plaintiff No.2 Smt.Jagwati underwent tubectomy operation from Civil Dispensary, Hodal on 1.6.1990; the operation was performed by the Medical Officer/Incharge of Civil Dispensary in question and thereafter, he had issued a certificate to the plaintiffs that plaintiff No.2 Smt.Jagwati would not conceive further and would not give birth to any child, however, subsequently plaintiff No.2 Smt.Jagwati conceived and gave birth to a female child, named, Sunita at B.K. Hospital, Faridabad on 15.6.1992.

According to the plaintiffs, plaintiff No.2 Smt.Jagwati had conceived on account of negligent and careless act done by the Medical Officer/Incharge, Civil Dispensary, Hodal, who had performed family planning operation upon plaintiff No.2 Smt.Jagwati. The plaintiffs claimed damages to the tune of Rs.4 lakhs stating that they are entitled to recover the same from the defendants.

3. On being given notice, the defendants appeared and filed a joint written statement contesting the suit *inter alia* raising various preliminary objections contending that no cause of action had arisen to the plaintiffs to bring the suit; the suit was not maintainable; the plaintiffs were estopped by their own act and conduct from filing the suit etc. On merits, it was contended that it was nowhere mentioned

in the certificate that plaintiff No.2 Smt.Jagwati would not conceive in future and no assurance had been given by the operating surgeon to the plaintiffs in that regard; the operation had been successfully carried out and if plaintiff No.2 Smt.Jagwati conceived again and gave birth to fourth child, that was not on account of any negligence or carelessness on the part of the operating surgeon; since family welfare programme is a 100% voluntary programme, plaintiff No.2 Smt.Jagwati had volunteered herself for undergoing tubectomy operation. Refuting the remaining assertions, defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the decree for recovery of Rs.4,00,000/- by way of damages/compensation as prayed for? OPP.
2. Whether the plaintiff has no cause of action to file the present suit? OPD.
3. Whether the plaintiff has not attached permission letter of the competent authority? OPD.
4. Whether this case has already been rejected by the Haryana

Govt. vide letter No.1/114/93-1 HB-II dt.30.11.93? OPD.

5. Whether the suit is not maintainable in the present form? OPD.

6. Whether the suit is time barred? OPD.

7. Whether the plaintiff is estopped from filing the suit by her own acts and conduct? OPD.

8. Relief.

6. Both the parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Palwal after giving issue-wise findings dismissed the suit of the plaintiffs vide judgment and decree dated 1.10.2002.

8. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Faridabad, which was assigned to Additional District Judge, Faridabad, who vide judgment and decree dated 7.2.2004 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs for recovery of Rs.50,000/- with interest @ 6% per annum from the date of filing of the suit till the date of realisation. As the plaintiffs had filed suit as indigent person, it was directed that the amount of compensation to be recovered by them from the defendants would be subject to deduction of Court fee on the amount of damages.

9. Being dissatisfied with the judgment and decree passed by Additional District Judge, Faridabad, the defendants have filed the present regular second appeal before this Court, notice of which was given to respondents. Initially both the respondents had appeared through counsel, however, later on only respondent No.1 was being represented through counsel.

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

11. The defendants do not dispute that plaintiff No.2 Smt.Jagwati had undergone tubectomy operation at Civil Dispensary, Hodal on 1.6.1990 under family planning programme, however, she had conceived again and given birth to a female child at B.K. Hospital, Faridabad on 15.6.1992. That shows that tubectomy operation performed on plaintiff No.2 Smt.Jagwati by defendant No.1 surgeon had failed. In their defence, the defendants have raised a plea that plaintiff No.2 Smt.Jagwati had come to the Government Dispensary to undergo tubectomy operation of her own and nobody compelled her to do so. She had undergone the surgery voluntarily and at the time of discharging her from Civil Dispensary, Hodal, no assurance was given to her that she would not conceive again or give birth to another child and if she had conceived and given birth to fourth child that was not on account of any negligence of carelessness on the part of operating surgeon.

12. However, I find that the defence so taken by the defendants is not convincing and plausible and it was rightly rejected by the First Appellate Court of Additional District Judge, Faridabad. Referring to the consent form Ex.DW1/A bearing thumb impressions of plaintiff No.2 Smt.Jagwati, learned Government Pleader for the appellants had pointed out that such plaintiff had agreed that in case of failure of family planning operation, the operating surgeon would not be responsible for the same, therefore the plaintiffs had no right to bring a suit for compensation/damages against operating surgeon and other officers as well as State of Haryana. The First Appellate Court of Additional District Judge, Faridabad during the course of discussion in para No.9 of the judgment has rightly observed that giving up a legal right to claim damages is not hit by Section 23 of the Act of 1872. A judgment in that regard was referred to as **Usman Koya Versus Santha, 2003(3) RCR(Civil)39**. The Clause in the consent form that operating surgeon/hospital would not be held responsible was found to be against the public policy. Referring to judgment **Dil & Natural Gas Corporation Ltd. Versus SAW Pipes Ltd., 2003(2) RCR(Civil)554**, it was further observed that the plaintiff No.2 Smt.Jagwati is a poor lady and by giving birth to an unwanted child would be put to burden. Therefore, the defendants were held liable to pay damages/compensation. It has been observed that there is nothing on record to show that operating surgeon had

advised plaintiff No.2 Smt.Jagwati that she should not share bed with her husband for a period of three months of the operation. Though consent form Ex.DW1/A bears thumb impressions of plaintiff No.2 Smt.Jagwati but that does not show that she understood the contents of the document being an illiterate lady and the failure of tubectomy operation was on account of negligence of the operating doctor. On account of that reasoning, the suit of the plaintiffs had been decreed.

13. I find that the learned trial Court of Civil Judge (Jr.Divn.), Palwal had not properly appreciated the evidence adduced by the parties and was unable to interpret the law on the subject properly, for the said reason he had dismissed the suit of the plaintiffs. Whereas judgment and decree passed by learned Additional District Judge, Faridabad in appeal is quite detailed, well reasoned and based upon proper appraisal of evidence and correct interpretation of law. I do not see any reason to upset that judgment and decree.

14. 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.

The next authority referred to by learned counsel for respondent No.1 was **Punjab State Versus Smt.Surinder Kaur, 2000(3) RCR(Civil) 26** by a Single Judge of this Court, which had almost similar facts where a married woman, who had undertaken a family planning operation had even then conceived a child; the suit filed by her seeking damages was decreed by the Courts below and dismissing the regular second appeal filed by the State, it was observed that State was liable to act committed on part of its employee and plaintiff was entitled to recover amount from the State.

15. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Faridabad.

16. No substantial question of law or fact arises in this appeal.

17. The appeal stands dismissed accordingly.

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

3.2.2023

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Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No

**(H.S.MADAAN)
JUDGE**