

RSA-1471-2005(O&M) &
RSA-1918-2006(O&M)

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

(1) RSA-1471-2005(O&M)

Haryana State and others

...Appellants

Versus

Smt.Kamla Devi

...Respondent

(2) RSA-1918-2006(O&M)

Smt.Kamla Devi

...Appellant

Versus

Haryana State and others

...Respondents

Date of decision:-15.2.2023

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

Present: Mr.Karan Jindal, Assistant Advocate General, Haryana
for the appellants in RSA-1471-2005 and
for the respondents in RSA-1918-2006.

None for the appellant in RSA-1918-2006 and
none for the respondent in RSA-1471-2005.

H.S. MADAAN, J.

1. By this order, I shall dispose of two regular second appeals
i.e. RSA-1471-2005 filed on behalf of appellants Haryana State and
others and RSA-1918-2006 filed on behalf of appellant Smt.Kamla Devi,
as both the appeals have arisen out of the same judgment and decree.
2. Briefly stated, facts of the case are that plaintiff Smt.Kamla

Devi had brought a suit for recovery against defendants i.e. Haryana State through Chief Secretary, Haryana, Secretary, Health Department, Haryana, Collector, District Mahendergarh at Narnaul and Civil Surgeon, Narnaul as damages on account of failure of her tubectomy operation conducted on 22.11.1994, which was conducted by Dr.Usha Chhakkar, who had assured the plaintiff that operation was completed successfully and in future, she would not conceive any child, however, despite that the plaintiff conceived, which came to her knowledge in the month of June, 1995 when the doctor told her that she was carrying a six months old pregnancy, which could not be terminated at such advance stage. Accordingly the plaintiff gave birth to fourth child on 25.7.1995.

3. According to the plaintiff, as a result of birth of fourth child, she would be burdened with expenses in bringing up the child, giving education, performing marriage etc. The plaintiff called upon the defendants to pay her compensation but to no avail. She had served a legal notice dated 13.12.1995 upon the defendants in that regard without soliciting any response, as such, she filed the suit.

It is pertinent to mention here that the plaintiff had filed the suit as an indigent person and after calling the report of concerned Collector vide order dated 20.12.2000, she was allowed to sue as such.

4. On notice, the defendants appeared and filed a joint written statement contesting the suit raising various legal objections, on merits admitting that the plaintiff was operated upon on 24.11.1994, however, denying that the operation had been performed by Dr.Usha Chakkar.

According to the defendants before carrying out the operation, the

plaintiff was told that in a few cases tubectomy operations fail; the plaintiff had thumb marked the relevant form; she was told that in case there was any irregularity developed in her menstruation period, she should immediately contact the doctor but after conception the plaintiff did not meet the doctor because if she had done so at the earliest, the foetus could have been aborted; the plaintiff has given birth to the child as per her own will and defendants cannot be held liable to pay any damages. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

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

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

1. Whether in 1995 plaintiff became pregnant and gave birth to a child despite her operation conducted in Civil Hospital, Narnaul, due to negligence of defendants? OPP.
2. If issue No.1 is proved, whether plaintiff is entitled to claim the damages, if so to what extent? OPP.
3. Whether plaintiff is estopped to institute the present suit due to her own act and conduct? OPD.
4. Whether suit is not maintainable in the present form? OPD.
5. Whether plaintiff has no cause of action to file the present suit? OPD.
6. Whether suit is barred by limitation? OPD.

7. Whether suit is bad for non-joinder of necessary parties? OPD.

8. Whether suit is bad for want of notice u/s 80 CPC? OPD.

9. Relief.

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

8. After hearing the learned counsel for the parties, the trial Court of Addl.Civil Judge (Sr.Divn.), Narnaul after giving issue-wise findings dismissed the suit of the plaintiff vide judgment and decree dated 30.4.2004.

9. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment and decree dated 8.2.2005 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff observing that the plaintiff is entitled to receive compensation to the tune of Rs.60,000/- from the Government to enable her to bring up the child until she attains majority.

10. Being dissatisfied with the judgment and decree passed by Additional District Judge, Narnaul, the defendants have filed RSA-1471-2005 seeking dismissal of the suit of the plaintiff while allowing the appeal, whereas plaintiff has filed RSA-1918-2006 seeking modification/enhancement of the compensation on account of damages.

11. Initially, the respondent in RSA-1471-2005, who is appellant in RSA-1918-2006, was being represented through counsel. However, later on there was no representation on her behalf. Since the regular

second appeals relate to the year 2005 and 2006, respectively, I proceed to decide the appeals after hearing learned counsel for the appellants in RSA-1471-2005, who are respondents in RSA-1918-2006.

12. I find that the learned trial Court of Addl.Civil Judge (Sr.Divn.), Narnaul 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 plaintiff. Whereas judgment and decree passed by learned Additional District Judge, Narnaul 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.

13. Learned Additional District Judge, Narnaul has rightly come to the conclusion that the plaintiff had undergone tubectomy operation under sterilization scheme launched by Haryana State. After performing the operation, a certificate was issued to the plaintiff on 22.11.1994 under signatures of Medical Officer and she was assured that full, complete and successful sterilization operation had been performed upon her and she would not conceived a child in future but despite that she conceived. Furthermore, when she was informed by the doctor that she was carrying pregnancy of six months, which could not be aborted at that stage as it was risk for her life, under the circumstances the plaintiff had to give birth to a female child, which the plaintiff and her husband did not desire, in that way birth of a new child put the plaintiff to unnecessarily burden of rearing up the child and to bear expenses involved in maintenance of that child including clothes and education. The First Appellate Court of

Additional District Judge, Narnaul has taken into consideration the plea raised by the defendants that the plaintiff had been informed that the operation might fail for which the doctor could not be made responsible and she had put her thumb impressions on consent Ex.D1 and reference by defendants to book by Professor C.S. Dawn to the effect that failure rate of such kind of operation varies from 1-10/1000 procedure. Although the defendants pleaded that there was no negligence in performance of operation but the First Appellate Court on analysis of the evidence reached a firm conclusion that Medical Officer, who conducted the operation had thrown the care and caution to the winds and focussed attention to perform as many as operations as possible to create a record and earn publicity, in the process a poor lady (plaintiff) was negligently operated upon and treated and left in the lurch to suffer agony and burden which she was made to believe was avoidable. It has further been observed that the act of doctor shows that the doctor did not perform her duty to the best of his ability and with due care and caution and due to those acts, the plaintiff has to suffer mental pain and agony and burden of financial liability.

14. I do not see any reason to take a different view in the matter from one taken by the First Appellate Court of Additional District Judge, Narnaul. The damages awarded are cannot be said to be on higher side. Those are found to be just and adequate keeping in view the facts and circumstances of the case. At the same time, I do not find any reason to enhance the compensation.

15. No substantial question of law or fact arises in these appeals.

16. The appeals stand dismissed accordingly.

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

15.2.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No