

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 21st March, 2023

+

W.P.(C) 8580/2020

MASTER PRATHAM SINGH LATWAL

..... Petitioner

Through: Mr. Ajay Kumar Pipaniya, Ms. Pallavi Pipaniya, Mr. Para Punyani & Mr. Imtiaz Hussain, Advocates.
(M:9810466554)

versus

**GURU GOBIND SINGH GOVT HOSPITAL
AND ORS**

..... Respondents

Through: Mr. Satyakam, Additional Standing Counsel Govt of NCT of Delhi with Ms. Pallavii Singh, with Dr. Sangeeta Rani, Sr. CMO with Dr. Kiran Bhanot, Consultant Eye and Mr. Sanjay Kumar, Adm Officer.
Dr. Harish from GGS hospital.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. In the present case, compensation is being sought on behalf of the Petitioner for alleged medical negligence. The Petitioner is a minor who has filed the present writ petition through his father. The Petitioner was born on 28th June, 2020 at Respondent No.1 Hospital- Guru Gobind Singh Govt. Hospital, Delhi (*hereinafter*, "GGS^H") and was a premature child born in the 29th week of gestation of the mother. The present petition has been filed seeking the following prayers:

- (i) Compensation towards causing loss of vision/ eyesight to the

petitioner due negligence in treatment - Rs. 11,00,00,000/- (Rupees Eleven Crore Only); in order to provide proper care, education, medical and financial support to the petitioner;

- (ii) Compensation towards medical expenses incurred in different hospitals;
- (iii) Compensation towards mental harassment and physical and mental agony - Rs. 1,00,00,000/- (Rupees One Crore Only);
- (iv) Cost of litigation.

3. The case of the Petitioner is that he is totally blind due to medical negligence at the GGSB, as a Retinopathy of prematurity (ROP) screening which was to be conducted within four weeks of the birth of the child was not conducted in the required time frame.

4. Vide order dated 5th January, 2023, Respondent No.9 - Dr. Harish, Senior Resident, Department of Ophthalmology, GGSB who examined the child on 27th July, 2020 was directed to place on record a report as per paragraph 9 of the counter affidavit.

5. In compliance with the order dated 5th January, 2023, Dr. Harish has submitted the required report and the same is on record.

6. Today, Dr. Harish, has joined the proceedings virtually and he submits that the Department of Ophthalmology of the Guru Gobind Singh Government Hospital was informed of the condition of the baby only on 27th July, 2020. He points out that immediately after the said information was received, the ophthalmology department took all the necessary steps to conduct the dilation. The dilation was fixed initially for 27th July, 2020 and thereafter on 28th July, 2020. However, it was capable of being conducted only on 29th July, 2020 owing to the condition of the baby who was a

premature baby as the dilation was not possible. On the date when the test was conducted i.e., 29th July, 2020, it was noticed that the vessels were tortuous in both eyes and immediately the reference was made to Dr. Rajendra Prasad Centre for Ophthalmic Sciences, AIIMS for detailed evaluation and ROP screening. Thus, insofar as the ophthalmology department of Hospital was concerned, immediately upon receiving the information of the condition of the baby, the requisite steps were taken by the hospital.

7. The Court has also perused the record. Ld. Counsel for the Petitioner submits that the ROP ought to have been conducted within time and there was a chance that the child's vision would not have been affected. Mr. Satyakam, ld. counsel for GNCTD has taken the court through the record and submits that the hospital and doctors cannot be blamed.

8. This Court observes that the newly born child has turned blind due to various unfortunate circumstances. After perusing the record, at this stage, the Court is unable to go into the facts in detail and pin point the blame to any particular individual or organisation. The child was a premature baby, had several birth related complications and thereafter contacted Pneumonia. In the midst of this, the ophthalmic department has conducted the requisite tests and taken the necessary steps. In view of various complications, the child could also not be discharged early. The entire period was during the pandemic. The ophthalmic department had referred the case to the Dr. Rajendra Prasad Ophthalmic Centre at AIIMS on 28th July 2022 itself. However, the parents took the child to AIIMS only in the first week of September. Bearing in mind these factors, based on the submissions today made by Dr. Harish and upon perusing the record, the finding of medical

negligence cannot be given by this Court at this stage and the same may require a proper assessment on a factual basis, which this Court is not to undertake in a writ petition.

9. Vide judgment dated 7th September, 2021, the Supreme Court in ***Harish Kumar Khurana v. Joginder Singh, 2021 SCC OnLine SC 673*** has highlighted that in any case where the medical treatment or diagnosis has not been successful, there cannot be a presumption that the medical professional was negligent. The relevant extract from paragraph 14 of the said judgment is extracted as under:

14. Having noted the decisions relied upon by the learned counsel for the parties, it is clear that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of res ipsa loquitur could be made applicable and not based on perception ...

10. Cases claiming compensation due to Medical Negligence require a determination of disputed questions of fact. The said determination ought to be in appropriate jurisdiction and not in writ jurisdiction. In judgment dated 3rd February, 2015 in ***LPA 55/2015*** titled ***Kamla Devi v. Union of India & Ors.*** a Division Bench of this Court has also affirmed this position. The relevant extract of the said judgment is extracted as under:

“8. In the aforesaid state of pleadings, we do not find any error in the reasoning of the learned Single Judge

that the matter indeed involved disputed questions of fact which could not have been adjudicated in writ jurisdiction and are best left to be adjudicated in appropriate jurisdiction where proper enquiry with respect thereto can be made. **Whether, as a matter of fact, there was negligence on the part of the respondents or not cannot be determined in writ proceedings under Article 226 of the Constitution.** These are matters of evidence which, in fact, can be resolved only on the basis of material which is produced in the course of the trial of a suit. **Where a claim intrinsically depends upon proof of an act of medical negligence, such a claim cannot be determined in exercise of a writ jurisdiction.** Negligence when alleged against any person is a question of fact which can be decided by oral and documentary evidence and the Court under writ jurisdiction cannot decide such questions of fact. Lord Denning in Hucks Vs. Cole (1968) 118 N.L.J. 469 observed that a charge of professional negligence against a medical man is serious and has far more serious consequences affecting his professional status and reputation and thus stands on a different footing to a charge of negligence against the driver of a motorcar."

11. In **Kamla Devi (supra)**, while reaffirming the decision of the Supreme Court in **Dr. C.P. Sreekumar Vs. S. Ramanujan, (2009) 7 SCC 130** it was also observed that excessive suspicion about the negligence of attending Doctors and frequent interference by Courts would be detrimental to the interests of the patients itself. It may even prevent Doctors from taking decisions which could result in complications and in this situation the patient would be the ultimate sufferer. The Supreme Court has therefore, cautioned Courts that setting the law in motion against medical professionals ought to be done cautiously and only when there are reasonably sure grounds for

such action.

12. However, in the overall facts and circumstances of this case, taking a compassionate and empathetic view of the matter, as also the fact that the Petitioner had moved from one hospital to another in order to obtain the requisite treatment for the newly born child, Rs.3 lakhs is awarded as *ex-gratia* costs/reimbursement of medical expenses to the Petitioner. The Petitioner is, however, free to avail of his remedies, if any, in accordance with law.

13. It is made clear that the direction for release of the sum of Rs. 3 lakhs shall not be construed as an opinion on merits *qua* the conduct of the hospital or the doctor concerned. The GNCTD shall release the amount within a period of 6 weeks from today.

14. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

MARCH 21, 2023

dk/am

**PRATHIBA M. SINGH
JUDGE**