



S.A.No.327 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.327 of 2010

Vasantha

.. Appellant

Vs.

1.The State of Tamil Nadu,
rep. by the District Collector,
Dharmapuri.

2.The District Family Welfard
Maternity and Child Health Officer,
Dharmapuri.

3.Dr.Manimealai
Assistant Surgeon
Government Hospital,
Dharmapuri.

.. Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed against the Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri, dated 18.09.2009 in A.S.No.15 of 2008, reversing the judgment and decree of the learned District Munsif of Pollachampalli, dated 08.10.2004 in O.S.No.16 of 2004.



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For Appellant : Mr.V.Nicholas
For R1 & R2 : Ms.S.Suriya, AGP
For R3 : Mr.T.Gopinath

J U D G M E N T

The appellants have filed this Second Appeal against the Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri, dated 18.09.2009 in A.S.No.15 of 2008, reversing the judgment and decree of the learned District Munsif of Pollachampalli, dated 08.10.2004 in O.S.No.16 of 2004.

2. Heard, Mr.V.Nicholas, learned counsel for the appellant and Ms.S.Suriya, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.T.Gopinath, learned counsel appearing for the respondent 3 and perused the materials available on record.

3. The suit was filed in 1997, challenging the reversal of the finding in A.S.No.15 of 2008. The plaintiff approached this Court after the trial Court



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dismissed her suit, which sought compensation for damages from the respondent. The plaintiff had undergone a laparoscopic operation on 13.09.1992 at the Government Hospital in Dharmapuri under the Government Golden Scheme of Family Planning. The third defendant had assured her that the laparoscopic operation would definitely prevent pregnancy. Based on this assurance, she consented to the procedure, which was performed on 13.09.1992 at the Government Hospital in Dharmapuri. However, to her surprise, she conceived again and gave birth to a male child on 18.09.1996. The plaintiff contended that the laparoscopic operation was unsuccessful and contrary to the assurances given by the defendants. Therefore, she approached the Court, seeking damages due to the carelessness and negligence of the medical officer who conducted the surgery.

4. The defense argued, through P.W.1, that no assurance was given to the plaintiff that she would not conceive after the Tubectomy operation, as alleged by the plaintiff P.W.1. The defendants denied the plaintiff's claims and contended that there was no negligence or carelessness on the part of the medical officer.

5. After considering submissions from both sides, the learned trial judge



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concluded that the plaintiff became pregnant after the Tubectomy operation due to the negligence of the defendants. Given her status as a poor woman, the trial judge awarded her Rs.1 lakh in compensation. The defendants challenged this decision by filing A.S.No.15 of 2008. The first appellate judge ultimately held that there might not have been negligence on the part of the medical officer, as 100% success cannot be guaranteed in such procedures. Consequently, the appeal was allowed, and the findings of the trial judge were set aside.

6. The plaintiff then filed the present appeal, challenging the appellate judge's decision. The learned counsel for the appellant argued that the first appellate judge failed to recognize that the third defendant had assured the plaintiff that she would not conceive after the operation. The subsequent pregnancy indicated negligence on the part of the third defendant, suggesting that the Tubectomy operation was not properly conducted.

7. The learned Government Pleader submitted that merely performing a laparoscopic operation cannot guarantee 100% success in preventing subsequent pregnancies, and there was no medical negligence involved.



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8. Upon reviewing the entire case, it is evident that the poor woman approached the hospital, trusting the Government Scheme, and consented to the Tubectomy operation. Despite the surgery, she became pregnant again, which caused her unnecessary hardship. Therefore, the compensation of Rs.1 lakh awarded by the trial Court is justifiable. Accordingly, the findings of the trial Court are confirmed, and the reasoning of the first appellate judge is set aside.

9. The learned Government Pleader further submitted that the plaintiff is not entitled to any interest based on the alleged G.O.No.150 and produced a copy of the said G.O. However, upon reviewing the G.O., it is clear that it pertains only to "Karunaithogai / Gratuity amount" and not to compensation. The plaintiff's claim differs from the provisions of the alleged G.O., and the case was properly filed by the plaintiff in 1997.

10. Accordingly, this second appeal is allowed. The respondent is directed to pay compensation with interest at the rate of 6% from 1997, till realisation, within a period of 12 weeks from the date of this order. No costs.

21.08.2024



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Index : Yes/No

Speaking Order: Yes/No

Nutral citation: Yes/No

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rep. by the District Collector,
Dharmapuri.

2.The District Family Welfard
Maternity and Child Health Officer,
Dharmapuri.

3. The Principal Subordinate Judge, Krishnagiri.

4. The District Munsif, Pollachampalli.

5.The Section Officer, VR Section,
High Court of Madras.

T.V.THAMILSELVI, J.

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