



RSA-801-1995 (O&M)

1

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

207

RSA-801-1995 (O&M)
Date of decision : 27.05.2024

Shinder Kaur ... Appellant(s)
Versus
Government of Punjab and Others ...Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay K. Jindal, Senior Advocate with
Mr. Pankaj Kumar, Advocate for the appellant.
Mr. Jasjit Singh, DAG Punjab for the respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 03.01.1995 passed by the First Appellate Court.
2. The brief facts relevant to the present case are that the plaintiff-appellant herein is stated to have undergone an operation of Vasectomy Tubectomy at Public Health Centre, Kohrian, Tehsil Sunam, District Sangrur. The operation was conducted by defendant-respondent No.3, who was posted as Medical Officer at the Health Centre. It is the case set up by the plaintiff-appellant that she underwent the operation with an understanding that after the operation she would not conceive and she would enjoy her married life without having to use any contraceptive. However, she became pregnant and gave birth to a baby girl. It is averred in the plaint

**RSA-801-1995 (O&M)****2**

that the operation was conducted without due care and caution and that defendant-respondent No.3 was negligent in performing the operation and as a result she suffered mental and physical pain. Compensation to the tune of Rs.1.5 lacs was claimed. The suit was contested by the defendants-respondents. Defendant-respondent No.3 - the doctor - was stated to be a qualified and competent Medical Officer. It was further averred that no loss was suffered by the plaintiff-appellant.

3. On the basis of the pleadings, the following issues were framed:

- 1) Whether the plaintiff was undergone the operation of Vasectomy Tubectomy by the defendants and was given assurance to consumed marriage without using any contraceptives, but inspite of the operation the plaintiff conceived pregnancy ? If so, whether the plaintiff suffered mental and physical shock and is entitled to recover Rs.1.5 Lacs as damages ? OPP
- 2) Whether the plaintiff has given a valid notice under section 80 CPC before instituting the present suit ? OPP
- 3) Relief.

4. The Trial Court vide judgment and decree dated 01.10.1993 decreed the suit filed by the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the defendants-respondents which was allowed vide judgment and decree dated 03.01.1995. Hence, the present regular second appeal.

**RSA-801-1995 (O&M)****3**

5. Learned counsel for the plaintiff-appellant would contend that as a result of the failed Tubectomy, the plaintiff-appellant conceived and thereafter she could not undergo an abortion and resultantly gave birth to a baby girl. Hence, for the mental and physical pain suffered by her, compensation to the tune of Rs.1.5 lacs was claimed and was rightly granted by the Trial Court. It is urged that the First Appellate Court erred in dismissing her suit.

6. *Per contra*, learned counsel for the defendant-respondents would contend that in the present case there was no negligence on the part of the Surgeon in conducting the Tubectomy and failure of the sterilization operation would itself not entitled the plaintiff-appellant for compensation. In support of his arguments, he has relied upon the Hon'ble Supreme Court judgement in the case of **State of Punjab vs. Shiv Ram & Ors. [2005(4) RCR (Criminal) 92]**.

7. I have heard the learned counsel for the parties.

8. In the present case, though the plaintiff-appellant had stated in the plaint that the operation was not conducted in a cautious and careful manner and as a result of which she suffered mental and physical pain. However, a perusal of the record reveals that no negligence or overt act has been attributed to defendant-respondent No.3. The only case made out is that the plaintiff-appellant conceived despite having undergone the Tubectomy. It is an admitted case that that the plaintiff-appellant had voluntarily undergone the operation. Ex.RX1 is the writing in which the plaintiff-

**RSA-801-1995 (O&M)****4**

appellant has clearly admitted that she was undergoing the operation on account of her free will and volition and she understood the consequences of the operation.

In **Shiv Ram's case (supra)**, in paras 21 and 24, the Hon'ble Supreme Court held as under :

“21. We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to satisfy Bolam's test. So also, the surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100 % exclusion of pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee.

22. xxx



23. xxx

24. *The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become Pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to sub- section (2) of Section 3 provides -*

"Explanation II. - Where any Pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted Pregnancy may



RSA-801-1995 (O&M)

6

be presumed to constitute a grave injury to the mental health of the pregnant woman." "

9. In the absence of any allegations muchless proof of any negligence in carrying out the operation, no fault can be found in the judgment and decree dated 03.01.1995 passed by the First Appellate Court. No other point was argued.

10. The regular second appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

27.05.2024
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO