

2024:PHHC:163128



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2131-2007 (O&M)
Reserved on : 19.11.2024
Pronounced on : 09.12.2024

Director, Punjab Health Corporation
and others
Vs.
...Appellants

Suraj Mukhi
...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Salil Sabhlok, Sr. DAG, Punjab.

Mr. M.K. Singla, Advocate
for the respondent.

ANIL KSHETARPAL, J.

1. This is defendants regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing plaintiff's suit for award of compensation to the extent of Rs.50,000/- on account of failure of sterilization operation.
2. The respondent (plaintiff) underwent tubectomy on 29.05.2000, whereas, she filed a civil suit on 01.06.2004 complaining that a female child was born to her on 06.01.2001. She alleged that Dr. Hardeep Sharma acted in a negligent manner and failed to perform the sterilization operation. The defendants contested the case while contending that there was no negligence on the part of the Doctor and sometimes operation is unsuccessful, which was

disclosed to the plaintiff in the form signed by her at the time of the surgery exhibited as Ex. R-1. The patient was also advised to take certain precautions.

3. The plaintiff examined herself as PW-1 and also examined PW2-Smt. Parmeshwari Devi and PW3-Mohan Kumar, whereas, on behalf of the defendant, DW1-Hardeep Sharma appeared.

4. The trial Court as well as the First Appellate Court have held that the State Health Department was required to examine the patient at least for the period of 09 months to see as to whether the operation has been successful or not. Since the department failed to take such steps, hence, the plaintiff was entitled to recover Rs.50,000/- as consolidated compensation.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. Learned State counsel while relying upon a Three Judge Bench judgment of the Supreme Court in '**State of Punjab Vs Shiv Ram and others**', **2005 (7) SCC 1** submits that the Courts have erred in decreeing the suit. He submits that the plaintiff failed to prove negligence in performing the surgery or incompetence of the Doctor. He submits that she was informed in Ex. R1 (thumb marked by the plaintiff) that there is no absolute guarantee of sterility after the operation.

7. *Per contra*, learned counsel representing the respondent submits that it is not open for this Court to re-appreciate the evidence, particularly, in view of current findings of fact arrived at by the Courts below.

8. In **Shiv Ram's** case (supra), a Larger Bench of the Supreme Court has held that the plaintiff filed a suit for compensation on account of failure in

sterilization operation is not entitled to succeed unless it is proved that the surgeon who performed the sterilization operation was not competent to perform the surgery or the surgeon was negligent while performing the surgery.

In para 21, 23, 26, the 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.

23. Mrs. K. Sarada Devi, the learned counsel appearing for the plaintiffs-respondents placed reliance on a 2-Judge Bench decision of this Court in [State of Haryana & Ors. v. Smt. Santra, 2000\(2\) RCR \(Civil\) 739 \(SC\) : IT 2000\(5\) SC 34](#), wherein this Court has upheld the decree awarding damages for medical negligence on account of the lady having given birth to an unwanted child on account of failure of sterilization operation. The case is clearly distinguishable and cannot be said to be laying down any law of universal application. The finding of fact arrived at therein was that the lady had offered herself for complete sterilization and not for partial operation and, therefore, both her fallopian tubes should have been operated upon. It was found as a matter of fact that only the right fallopian tube was operated upon and the left fallopian tube was left untouched. She was issued a certificate that her operation was successful and she was assured

that she would not conceive a child in future. It was in these circumstances, that a case of medical negligence was found and a decree for compensation in tort was held justified. The case thus proceeds on its own facts.

26. *The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.”*

9. It is evident that both the Courts below have assumed that department was negligent because the plaintiff was not called for periodical checkup. This is not sufficient to decree the suit for grant of compensation on the basis of allegation of tort. In this case, Dr. Hardeep Singh has appeared in evidence as DW1. He has also produced Ex.R1, the form filled by the plaintiff at the time of operation, wherein, it is printed that there is no absolute guarantee of 100% success of tubectomy.

10. Moreover, both the Courts below have not found that either the Doctor was negligent in performing the surgical procedure or he was not competent or authorized to operate. In absence thereof, it was not appropriate for the Courts below to decree the suit. The First Appellate Court has relied upon High Court's judgment in '**Punjab State versus Smt. Surinder Kaur**' **2003(3) PLR 411.**

11. In view of the judgment passed by Supreme Court, the opinion

formed by the High Court is no longer a good law.

- 12.Keeping in view the aforesaid discussion, the appeal is allowed.
- 13.The judgments passed by Courts below are set aside and the suit filed by the plaintiff shall stand dismissed without any cost.
- 14.All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

09.12.2024

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	Whether Reportable :	Yes	No