



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

**RSA No. 3231 of 2000 (O&M)
DATE OF DECISION: 31.07.2025**

THE STATE OF PUNJAB AND OTHERSAPPELLANTS

Vs.

MAYARESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Balwinder Singh, A.A.G., Punjab.

Mr. Gurcharan Dass, Advocate,
for the respondent.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The present Regular Second Appeal has been filed for setting aside the order dated 10.03.1999, passed by the learned Civil Judge (Junior Division), Ludhiana, whereby, the appellant-defendant has been directed to pay a sum of Rs.20,000/-, to the respondent-plaintiff, towards maintenance of her child and order dated 16.03.2000, passed by the learned Additional District Judge, Ludhiana, whereby, the appeal filed by the appellant-defendant was dismissed.

2. The respondent-plaintiff, Smt. Maya, filed a suit for recovery of Rs.2,00,000/- as damages and compensation against the appellants-The State of Punjab, The Director Health Punjab Chandigarh, The Chief Medical Officer, Ludhiana and Senior Medical Officer, Civil Hospital, Ludhiana for their negligent act in conducting the Tubectomy operation upon the plaintiff, which was found to be ineffective and unsuccessful. It is the case of the plaintiff that she was married and had five children. She was



induced by the staff of the appellant-Department and agreed to undergo the Tubectomy operation, as the civil hospital authorities offered attractive rewards and assured her with a guarantee that, after the operation, there would be no possibility of future conception. The plaintiff was operated upon by a team of Doctors under the charge of Senior Medical Officer at Civil Hospital, Ludhiana, under O.T. No. 320, Registration No. 330, dated 14.06.1988, and a certificate to this effect was issued. She was assured that she would never conceive and thereafter, she could enjoy her sexual life without any fear and without the use of artificial contraceptives or other contraceptive pills. However, on 03.07.1990, it was discovered that the plaintiff was pregnant, and she subsequently delivered a child on 17.12.1990. Prior to the delivery, the plaintiff served a legal notice upon the defendants-appellants, but no reply was received. The plaintiff incurred expenses related to the delivery and has been bearing the ongoing expenses for the upbringing of the child. It is further stated that her health also deteriorated as a result.

2.1 The suit was contested by the defendants-appellants. In the written statement, it was pleaded that the Medical Officer who conducted the operation had informed the plaintiff that, at times, sterilization operations may fail, and there exists a possibility of failure of the Tubectomy operation up to 0.3%. Despite being informed of the said risk, the plaintiff voluntarily offered herself for the Tubectomy operation. It is further contended in the written statement that the plaintiff gave birth to the child of her own volition. It is asserted that she could have opted for medical termination of pregnancy after she came to know that she was



pregnant. Service of the notice under Section 80 of the Civil Procedure Code, 1908 was admitted.

2.2 The following issues were framed by the trial Court:-

- (i) Whether the plaintiff is entitled for the recovery of Rs. 2,00,000/- as alleged?
- (ii) Whether the suit is not maintainable as alleged?
- (iii) Relief

2.3 Both the parties were permitted to lead evidence, and after considering the same, Issue No. 1 was decided in favour of the plaintiff. The learned Civil Judge observed that the birth of the child had become a burden on the plaintiff's family, and it was very difficult for the plaintiff to look after her sixth child. The plaintiff would have to arrange finances for the child's education, maintenance, and marriage. It was further observed that there was negligence on the part of the doctor who performed the said operation. The admission made by the defendant's witness, DW-1, was also taken into consideration, wherein it was admitted that the advertisement clearly stated that family planning operations are successful and that there are no chances of conception.

2.4 Considering the fact that the child was the sixth in the plaintiff's family, the suit filed by the plaintiff was decreed. The defendants were directed to pay a sum of Rs. 20,000/- towards the maintenance, education, and future marriage expenses of the plaintiff's child.

3. Both the parties filed appeals before the First Appellate Court and assailed the said findings. The appeals filed by both parties were dismissed vide judgment and decree dated 16.03.2000 by the First



Appellate Court. The First Appellate Court also took note of the testimony of DW-1, Dr. Varinder Kapil, who stated that the plaintiff had undergone the said operation at the Civil Hospital, Ludhiana in 1988, and that the advertisement clearly mentioned that family planning operations are successful and that there are no chances of conception.

3.1 The First Appellate Court further considered the fact that the plaintiff already had five children when she underwent the Tubectomy operation. It was also noticed that PW-2, Gaffura, who conducted the delivery of the plaintiff at the time of birth of her sixth child (a girl), deposed that termination of pregnancy immediately after conception was not advisable due to the plaintiff's ill health.

3.2 The Appellate Court further observed that, had the plaintiff not undergone the said operation, she would have resorted to precautionary measures, such as using contraceptive pills, to avoid further pregnancy. However, since she was assured that no pregnancy would occur after the said operation, she did not adopt any further precautionary measures.

3.3 Confirming the finding of negligence in the performance of the operation, the First Appellate Court dismissed the appeals and upheld the findings of the Trial Court.

4. Learned Additional Advocate General, Punjab, representing the appellants, submits that the trial Court and the First Appellate Court have not appreciated the evidence raised by the appellant-defendant. The Medical Officer, who conducted the Tubectomy operation on the respondent has informed the plaintiff-respondent that the sterilization



operation may fail and the chances of failure are upto 0.3%. Despite that, the plaintiff-respondent voluntarily offered herself for the said operation. The written consent of the operation was proved as Ex.D-1/A, which was not considered by the First Appellate Court. It is further contended that after pregnancy, the respondent-plaintiff did not report to the Civil Hospital, Ludhiana and this evidence has been ignored by both the Courts below.

5. I have considered the aforesaid submissions and perused the paper-book.

6. Though DW-1, Dr. Varinder Kapil, has stated that there are chances of failure of the Tubectomy operation upto 0.3%, and that the consent of the plaintiff was obtained prior to the said operation, being an informed consent. However, the admission of the said witness is very material that the advertisement clearly stated that family planning operations are successful and there are no chances of conception. The said admission has been rightly considered and taken note of by the trial Court and on the basis of the said admission, the First Appellate Court has rightly held and confirmed the findings that there was negligence on the part of the appellants-defendants.

6.1 The consent of the respondent-plaintiff should have been obtained after giving information about the pros and cons of the said operation and this fact should have been clearly informed to the respondent-plaintiff that there are chances of failure of the said operation to the extent of 0.3%. However, the advertisement was published to attract



public for the said operation by stating that such operations are successful and there are no chances of conception, which indicates that the consent obtained from the respondent-plaintiff was merely an eye-wash and it was not an informed consent. The First Appellate Court has considered the cross-examination of the said witness and rightly observed that the witness was not aware as to who had filled the consent form Ex. D-1/A. He also admitted that the signatures of the plaintiff were not obtained in his presence, and that there were cuttings in the said form. The said cuttings were not attested by any person.

7. In view of the aforesaid circumstances, I am of the considered opinion that the First Appellate Court has duly considered both the factual and legal aspects of the matter. The findings recorded therein do not suffer from any illegality or perversity, and there is no scope for interference.

8. Consequently, the present appeal is devoid of merits and is hereby dismissed.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 31, 2025
nitin/simran

(HARPREET KAUR JEEWAN)
JUDGE

<i>Whether Speaking</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>