

(2011) 05 P&H CK 0303

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 962 of 2006 (O and M)

Jagmal Singh and Others

APPELLANT

Vs

Arpana Research and Charities
Trust and Others

RESPONDENT

Date of Decision: May 19, 2011

Citation: (2013) ACJ 95 : (2011) 163 PLR 775

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

CM. No. 2409-C of 2006 :

For reasons mentioned in the application, which is accompanied by affidavit, delay of 82 days in filing the appeal is condoned.

Main Appeal :

1. By this common judgment, I am disposing of two second appeals i.e. R. S. A. No. 962 of 2006 and R. S. A. No. 963 of 2006 - both titled Jagmal Singh and Others v. Arpana Research and Charities Trust and Others because both these appeals have arisen out of a single suit. Both these appeals have been preferred by plaintiffs, who were partly successful in the trial court, but have been completely non-suited by the lower appellate court.

2. Appellants filed suit against respondents i.e. defendant-respondent no.1 Hospital and its three doctors and the Oriental Insurance Co. Ltd., for recovery of Rs. 1,50,000/- as compensation for the death of Vidhya Devi, who was wife of plaintiff-appellant no.1 and mother of minor plaintiff-appellants No. 2 to 5 (three sons and a daughter).

3. Plaintiffs' case is that after the birth of plaintiff No. 5, tubectomy operation of Vidhya Devi was advised by the defendants. Accordingly, on 29.02.1996, Vidhya Devi underwent tubectomy operation in the hospital of defendant no.1. The operation was performed by defendants No. 2 to 4. However, they were negligent in performing the operation and post operative care. Resultantly, Vidhya Devi died on the operation table itself. She was working as laborer earning Rs. 1200/- per month. Accordingly, plaintiffs claimed compensation of Rs. 1,50,000/- on account of her death.

4. Defendants no.1 to 4, in their written statement, while admitting that tubectomy operation was performed on Vidhya Devi in hospital of defendant no.1 on 29.02.1996, broadly denied the other averments of the plaintiffs. It was pleaded that all possible precautions were taken. Operation was performed at about 03:45* P.M. Then, she was shifted to the Ward at 04:15 P.M., but suddenly at about 05:00 P.M., she started sinking and in spite of best treatment given by defendant no.1 and its staff, she expired. There was no negligence of the doctors, It was also pleaded that in the case of liability, defendants insurer has to pay the compensation.

5. Defendant No. 5 pleaded that defendant no.1 has not obtained any professional indemnity policy covering the date of incident i.e. 29.02.1996 and as per cover note, it was valid from 14.04.1996 to 14.04.1997, and therefore, defendant No. 5 has no responsibility.

6. Learned Civil Judge (Senior Division), Karnal, vide judgment and decree dated 28.05.2003, partly decreed the plaintiffs' suit directing defendant no.1 only to pay Rs. 75,000/- as compensation to the plaintiffs with interest @ 6% per annum from the date of filing of suit (12.06.1996) till recovery. Defendant no.1 and plaintiffs preferred separate first appeals against judgment and decree of the trial court. Learned Additional District Judge, Karnal, vide common judgment and decrees dated 28.02.2005, allowed the appeal preferred by defendant no.1 and dismissed the appeal preferred by plaintiffs for enhancement of compensation and dismissed the plaintiffs' suit in toto. Feeling aggrieved, plaintiffs have filed the instant two second appeals because there were two first appeals. Before proceeding further, it has to be noticed that defendants No. 3 and 4 have since died. Their legal representatives have not been impleaded. Learned counsel for the appellants gives up the claim of the appellants against defendant-respondents No. 3 and 4 stating that despite best efforts, appellants could not find out the legal representatives of defendants No. 3 and 4.

7. I have heard learned counsel for the parties and perused the case file.

8. It has come in evidence and it is undisputed that Vidhya Devi, who was aged about 26 years only, died just about 01 hour 15 minutes after tubectomy operation performed on her by defendants No. 2 to 4 on behalf of defendant no.1. It was a simple operation of tubectomy. The deceased was a young lady. She died just 01

hour and 15 minutes after the operation. Consequently, the trial court rightly held that onus was on the defendants to depict that death was natural and not on account of their negligence. Everything pertaining to death was within the special knowledge of the defendants and plaintiffs possibly could not have led any other evidence in this regard. Doctrine of *res is liquetur* is squarely attracted to the circumstances of the instant case. Keeping in view the admitted facts and circumstances of the instant case, it can be safely said that Vidhya Devi died on account of some negligence on the part of defendants No. 1 to 4.

9. Learned counsel for respondents no.1 and 2, relying on judgment of Hon"ble Supreme Court in the case of *Martin F.D." Souza v. Mohd. Ishfaq* (2009-2) the Punjab Law Reporter 1 contended that there can be few cases where an exceptionally brilliant doctor performs an operation or prescribes a treatment, which has never been tried before to save the life" of a patient, when no known method of treatment is available and if the patient dies or suffers some serious harm or simply because the patient does not respond favorably to the treatment, the doctor cannot be held liable for medical negligence by applying the doctrine of *res is a loquitur*. The contention does not come to the -rescue of defendants herein. In the instant case, it was a simple operation of tubectomy and there was no question of any new operation or new line of treatment, which had never been tried before. On the contrary, in case of *Martin F. D"Souze* (supra), the patient was suffering from some serious ailment. There was lot of evidence produced by both the sides and it was found that doctors had done their best to save the patient and they were not negligent. In the instant case, however, the facts and circumstances are entirely different. Patient was not suffering from any ailment. Only tubectomy operation was performed on her and she died immediately thereafter. She was a young patient in her mid-twenties. Consequently, in the instant case, medical negligence on the part of defendants no.1 to 4 is writ large.

10. Finding of the lower appellate court to the contrary is perverse and illegal and is based on misreading and mis-appreciation of evidence. Substantial question of law arises for adjudication to this effect in the instant second appeal and the same is answered in favour of appellants.

11. As regards amount of compensation, the deceased was a young woman aged about 26 years. Even a casual unskilled laborer was earning more than Rs. 30/- per day i.e. Rs. 900/- per month in those days. Income of the deceased may also be taken to be the same. Dependency is assessed at Rs. 600/- per month being two-third of the monthly income. Annual dependency comes to Rs. 7200/-. Keeping in view the age of the deceased, multiplier of 16 would be just and appropriate. Accordingly, the compensation amount comes to Rs. 1,15,200/-. Besides it, the plaintiffs are also awarded Rs. 5,000/- towards loss of consortium (for plaintiff no.1) and Rs. 2,500/- for funeral expenses etc. The amount comes to Rs. 1,22,700/-, which is rounded off to Rs. 1,25,000/-. Defendants no.1 and 2 are jointly and severally liable

to pay the" same.

12. Coming to the question of liability of insurer-defendant No. 5, the trial court exonerated it because insurance policy covering the date of incident was not produced in evidence. However, in first appeal, the said policy was produced by way of additional evidence. Officer of insurer defendant No. 5 was examined as AW-1 and he proved insurance cover note and insurance policy for the period from 15.04.1995 to 14.04.1996 including the date of incident 29.02.1996. Consequently, defendant-respondent No. 5 is liable to indemnify defendants no.1 and 2. Learned counsel for defendant respondent No. 5 contended that its liability was to the extent of Rs. 50 lakhs and for single incident, the liability was 2.5% of insurance amount. Even accepting this contention, the compensation amount of Rs. 1,25,000/- would be covered by the insurance policy.

13. For the reasons aforesaid, both the instant second appeals are allowed. Judgment and decrees of the lower appellate court are set aside. Judgment and decree of the trial court are modified. Suit filed by the plaintiffs is decreed partly with costs throughout, for recovery of Rs. 1,25,000/- as compensation along with interest @ 6% per annum w.e.f. 12.06.1996 the date of filing of suit till recovery. Defendants no.1, 2 and 5 shall be jointly and severally liable to pay the decretal amount.