

(2007) 01 CHH CK 0002

Chhattisgarh High Court

Case No: None

State of Chhattisgarh
and Others

APPELLANT

Vs

Smt. Manju Bai

RESPONDENT

Date of Decision: Jan. 11, 2007

Acts Referred:

- Medical Termination of Pregnancy Act, 1971 - Section 3

Citation: (2008) ACJ 1695 : AIR 2007 Chh 87

Hon'ble Judges: D.R. Deshmukh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

D.R. Deshmukh, J.

Heard.

2. This appeal is directed against the judgment and decree dated 30-12-2005 delivered by IInd Additional District Judge, Durg, in Civil Suit No. 9B/2004, whereby a compensation of Rs. 67,000/- was awarded with interest @ 7% from the date of the judgment to the respondent/plaintiff on account of failure of sterilisation operation performed on the respondent on 28-2-1998 at Primary Health Centre, Gundardehi.

3. I have perused the plaint. Negligence of the doctor conducting sterilisation operation is neither pleaded nor proved.

4. In the case of [State of Punjab Vs. Shiv Ram and Others](#), the Apex Court held as under:

Merely because a woman having undergone a sterilisation operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy of unwanted child. The claim in tort in such cases can be sustained only if there was negligence on the

part of the surgeon in performing the surgery and not on account of childbirth. The proof of negligence shall have to satisfy Bolam's test (1957) 2 All ER 118, 121 D-F, set out in [Jacob Mathew Vs. State of Punjab and Another](#), para 19. Failure due to natural causes would not provide any ground for a 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 the 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. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. Section 3(2) read with Explanation II thereto, of the Medical Termination of Pregnancy Act, 1971 provides under the law, a valid and legal ground for termination of pregnancy. If the woman has suffered on unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.

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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 it was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. Ordinarily a surgeon does not offer such guarantee. Where a doctor contracted to carry out a particular operation on a patient and a particular result was expected, the Court would imply into the contract between the doctor and the patient a term that the operation would be carried out with reasonable care and skill, but would be slow to imply a term or unqualified collateral warranty that the expected result would actually be achieved, since it was probable that no responsible medical man would intend to give such a warranty.

The plaintiffs have not alleged that the lady surgeon who performed the sterilisation operation was not competent to perform the surgery and yet ventured into doing it. It is neither the case of the plaintiffs, nor has any finding been arrived at by any of the Courts below that the lady surgeon was negligent in performing the surgery. The present one is not a case where the surgeon who performed the surgery has committed breach of any duty cast on her as a surgeon. The surgery was performed by a technique known and recognised by medical science. It is a pure and simple case of sterilisation operation having failed though duly performed. The trial Court has proceeded to pass a decree of damages in favour of the plaintiff-respondents solely on this ground. No finding has been arrived at that will hold the operating surgeon or its employer the State, liable for damages either in contract or in tort. The error committed by the trial Court, though pointed out to the first appellate Court and the High Court, has been overlooked. The appeal has, therefore, to be allowed and the judgment and decree under appeal has to be set aside.

5. From perusal of the record of Civil Suit No. 9B/2004, it is clear that the appellants/defendant had also examined Dr. C.B. Prasad, D.W. 1, who had

conducted the sterilisation operation on the respondent/ plaintiff. It emerges therefrom that the respondent/plaintiff was advised to maintain abstinence from her husband for a period of 3 months after the sterilization operation, since there was a possibility of failure of the sterilisation. There is nothing on record to show that when the respondent/plaintiff conceived immediately after the sterilisation operation, she went for termination of pregnancy, which was permitted under law. Thus, the child born to the respondent/ plaintiff could not be said to be unwanted child.

6. In view of the principles enunciated by the Apex Court in [State of Punjab Vs. Shiv Ram and Others](#), in the absence of pleading or proof of negligence on the part of the operating surgeon, the claim in tort must fail. In this view of the matter, the impugned judgment cannot be sustained under law and is liable to be set aside.

7. As a result, the appeal is allowed. The impugned judgment and decree dated 30-12-2005 delivered in Civil Suit No. 9B/2004 is set aside. The suit is dismissed. There shall be no order as to costs.