
(2008) 03 MP CK 0021
In the Madhya Pradesh High Court

Bharti (Ku.) and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2009) 2 MPHT 472

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.—Being aggrieved by judgment and decree dated 25-10-83 passed by Additional District Judge, Jhabua in Civil Suit No. 3-B/1981, whereby the suit filed by the appellants for compensation was dismissed, the present appeal has been filed.

2. Short facts of the case are that the appellants who were minors filed a suit against the respondents for realization of a sum of Rs. 1,50,000/- on 17-6-77 alleging that deceased Maltidevi Gidwani was the mother of the appellants and was working in the office of Animal Husbandry, Jhabua as Accountant. The salary of the deceased Maltidevi was Rs. 373/- per month. It was alleged that on 19-7-1976 Smt. Maltidevi Gidwani was hospitalized at District Hospital, Jhabua where she delivered a son Laxman. It was alleged that after the delivery Maltidevi was pressurized by respondent Nos. 5 to 7 for T.T. operation and upon her denying the deceased and her husband were threatened that the deceased and her husband shall be terminated from their job and the husband of the deceased shall be arrested under the provisions of MISA. It was alleged that under the pressure of respondents deceased Maltidevi agreed for the said operation. It was alleged that generally such type of Family Planning Operations are being done after 5 days and within 10 days from the date of delivery but it was decided by the respondents to operate the deceased on 21-7-76, i.e., within 5 days. It was further alleged that respondent No. 5 was not competent to perform the operation. It was alleged that since the anaesthesia was

administered by an unauthorized person and life saving drugs were not available in the hospital, therefore, because of the carelessness and negligence on the part of the respondents, appellants lost their mother. It was also alleged that thereafter the newly born baby also passed away. It was alleged that for the operation consent of the deceased was not taken. On the contrary, in spite of refusing, the operation was conducted after taking the consent by application of undue influence that the deceased and her husband will lose the job and will be booked in MISA, as it was a period of emergency. It was alleged that before administering the anaesthesia deceased was not informed about the probable dangers. It was alleged that before the operation, her blood pressure was not checked. Anaesthesia was given by one Dulesingh respondent No. 8, who was a dresser and was not authorized to administer the anaesthesia but because of carelessness and negligence of the respondents and anaesthesia was administered by respondent No. 8. Deceased was not examined clinically before administration of anaesthesia. It was also alleged that the operation ought to have been done after 5 days of delivery, but was administered only after 2 days. No permission was obtained from the Civil Surgeon. Respondent No. 5 was not a competent doctor. There was no proper arrangement of oxygen and after the death of Maltidevi no post-mortem of the dead body was performed. It was alleged that husband of the deceased Maltidevi was sitting outside, who was informed at about 11.30 a.m. that Maltidevi his wife has expired. It was alleged that because of the negligence on the part of respondents, appellants lost their mother. Appellants claimed a sum of Rs. 1,50,000/- on various heads.

3. The suit was contested by the respondent Nos. 1 to 4 state and also by other respondents by filing the written statement, wherein it was denied that there was any negligence on the part of any of the respondents. It was also denied that the nature of the operation was serious. It was also denied that any type of carelessness or negligence was there on the part of respondents. It was alleged that there was shortage of doctor of anaesthesia, therefore, anaesthesia is being given by the dresser respondent No. 8, who was competent because of experience. It was alleged that deceased was having 6 live children, therefore, deceased was also interested in T.T. operation. It was also alleged that cause of death was due to cardiac arrest during Tubertorny operation under general anaesthesia. It was alleged that since there was no negligence on the part of respondents, therefore, the suit deserves to be dismissed and same be dismissed.

4. On the basis of the pleadings of the parties, learned Trial Court framed the issues, recorded the evidence and dismissed the suit against which the present appeal has been filed.

5. Shri Rohit Mangal, learned Counsel for the appellants argued at length and submits that the learned Trial Court committed error in dismissing the suit. It is submitted that from the pleadings itself, it was proved that the anaesthesia was given by a person, who was not competent, therefore, there was no justification on the part of learned Court below in dismissing the suit. It was alleged that

deceased Maltidevi was a young lady and delivered the son before 2 days. It is submitted that the burden of proof was on the respondents to prove that in what circumstances Maltidevi died at the time of T.T. operation and why she could not be saved. It is submitted that appeal be allowed and judgment and decree passed by learned Court below be set aside.

6. Shri S.D. Bohra, learned Counsel for respondent Nos. 1 to 4 submits that after due appreciation of evidence learned Trial Court dismissed the suit, which requires no interference.

7. From perusal of the record it is evident that to prove the case appellants examined Lakhmichand as P.W. 1, Chandrakant as P.W. 2, V.K. Shrivastava as P.W. 3 and Udhav Gidwani as D.W. 1. While, the respondents examined Basant Rao Pawar as D.W. 2, S.H. Yadav as D.W. 3, Martand Rao as D.W. 4, Omprakash Chaudhary as D.W. 5, Amerandranarayan Mishra as D.W. 6 and Dr. (Mrs.) Ratnamala Thakur as D.W. 7. Respondents filed 29 documents out of which Exhs. D-7 to D-15 are the complaints made by the husband of the deceased. Exh. D-18 is the bed head tickit which also contains the consent of the husband of deceased for the operation. Exh. D-19 is the statement of husband of deceased recorded on 24-7-76. Exhs. D-20 and 21 is record of availability of oxygen cylinder. Exhs. D-22 and 23 is the report of blood and urine of the deceased. According to Exh. D-18 bed head ticket of deceased patient delivered the baby on 19-7-76. There is a note in the handwriting of Dr. Ratnamala Thakur to the effect that the massage was continued for one hour alongwith mouth to mouth respiration but Pt. could not be revived. Hence efforts left and closed and Pt. declared dead. It is also mentioned that Dr. O.P. Kelotra was present throughout and Dr. N.R. Bhargava was present during resuscitation.

8. Modi's Medical Jurisprudence and Toxicology (Twentieth Edition) lays down that in the case of death from anaesthesia the surgeon or anaesthetist should at once report the matter to the police for holding a public inquiry. In the jurisprudence it is also mentioned that sudden death during anaesthesia is of considerable medico-legal importance, one should remember that sometimes it may be to inexperience and defective judgment of an anaesthetist. Any of the following factors may be responsible for death during anaesthesia:

(a) Giving or repeating of drugs like morphia, atropine, nembutal etc. before anaesthesia at wrong time.

(b) Vagal inhibition while putting an intratracheal tube.

(c) As a result of faulty use of relaxants and hypotensive drugs.

(d) Accidents which may cause obstruction of airway or spasm resulting in asphyxia.

(e) The amount and type of drug used for anaesthesia and duration of anaesthesia may have a fatal effect.

(f) Hypotension as a result of spinal anaesthesia.

(g) Inadvertently giving a wrong gas during anaesthesia or rarely causing an explosion. Dangerous combinations are oxygen and cyclopropane or ether which may be ignited by an accidental spark.

(h) Shock due to operation itself, myocardial or coronary disease of the heart, fat or air embolism, hypothermia or incompatible blood transfusion may be other causes. While doing a post-mortem, it is difficult to evaluate the cause of death, as usually there is no evidence of sudden fall of blood pressure, cardiac irregularities or glottic spasm, which may have been contributory of sudden death. Toxicological analysis may help.

9. In the matter of State of Haryana and Others Vs. Smt. Santra, , the Hon"ble Apex Court has held that Medical negligence plays its game in strange ways. Sometimes it plays with life; sometimes it gifts an "unwanted Child". Negligence is a "tort". Every doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. This what is known as "implied undertaking" by a member of the medical profession that he would use a fair, reasonable and competent degree of skill. Where a person is guilty of negligence per se, no further proof is needed. It was also observed that "if it is one that would not have been made by a reasonably competent professional man professing to have the standard and type of skill that the defendant held himself out as having, and acting with ordinary care, then it is negligent".

10. In the matter of Jacob Mathew Vs. State of Punjab and Another, , the Hon"ble Apex Court has held that "The essential components of negligence as recognized, are three : "duty", "breach" and "resulting damage", that is to say:

(1) the existence of a duty to take care, which is owed by the defendant to the complainant;

(2) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

(3) damage, which is both casually connected with such recognized by the law, has been suffered by the complainant.

"Thus, a clear distinction exists between simple lack of care incurring civil liability and "very high degree of negligence" which is required in criminal cases".

11. In the matter of State of Punjab Vs. Shiv Ram and Others, , the Hon"ble Apex Court has observed that a professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise with reasonable competence in the given case, the skill which he did possess. The medical profession is one of the oldest profession of the world and is the most humanitarian one. There is no better service than to serve the suffering, wounded and the sick. Inherent in the concept of any profession is a code of

conduct, containing the basic ethics that underline the moral values that govern professional practice and is aimed at upholding its dignity. Medical ethics underpin the values at the heart of the practitioner-client relationship. In recent times, professionals are developing a tendency to forget that the self-regulation which is at the heart of their profession is a privilege in return for an implicit contract with society to provide good, competent and accountable service to the public. It must always be kept in mind that a doctor's is a noble profession and the aim must be to serve humanity, otherwise this dignified profession will lose its true worth. In recent times the self-regulatory standards in the profession have shown a decline and this can be attributed to the overwhelming impact of commercialization of the sector. There are reports against doctors' exploitative medical practices, misuse of diagnostic procedures, brokering deals for sale of human organs, etc. It cannot be denied that black sheep have entered the profession and that the profession has been unable to isolate them effectively. The need for external regulation to supplement professional self-regulation is constantly growing. The high costs and investments involved in the delivery of medical care have made it an entrepreneurial activity wherein the professional looks to reaping maximum returns on such investment. Medical practice has always had a place of honour in society; currently the balance between service and business is shifting disturbingly towards business and this calls for improved and effective regulation, whether internal or external. There is need for introspection by doctors - individually and collectively. They must rise to the occasion and enforce discipline and high standards in the profession by assuming an active role.

12. In the light of the aforesaid position of law, it is to be examined whether the cause of death of Maltidevi was because of negligence on the part of respondents or not. Even if it is assumed that all the facilities were available at the District Hospital, Jhabua for which number of documents has been filed, then too, fact remains that at the relevant time no competent person was available in the hospital to administer anaesthesia. Respondents have admitted in their respective written statement that the respondent No. 8 was a dresser and because of the shortage of anaesthetist the respondent No. 8 was administering the anaesthesia. The operation of Maltidevi was not necessary for saving her life. If that would have been the situation, then anaesthesia could have been administered by respondent No. 8. Since there was no emergency, therefore, it was the duty of the respondent No. 5/Dr. Ratnamala Thakur not to allow the administration of anaesthesia by a person who was not competent for that job. Respondent No. 5, who was a lady doctor was negligent in discharging her duties in allowing an incompetent person to administer anaesthesia. The burden to prove that in what circumstances appellants lost their mother was on the respondents, as the age of the deceased was 30 years only and before 2 days of her death, she delivered a healthy baby and mother and child were enjoying good health. Even if the deceased was also willing for T.T. operation as she was having 6 children, then it could not have been permitted in absence of

anaesthetist. The bed head ticket does not disclose the date on which the operation took place. No report was lodged by respondent No. 5. Dead body was not sent for postmortem. Other doctors who were present at the relevant time whose names are mentioned in Exh. D-18 has not been examined. No more proof of negligence is necessary.

13. It appears that in those days when deceased was operated, it was made compulsory in the tribal areas for the patients for Family Planning Operation without any proper arrangements. Learned Court below has also held that the respondent No. 8 was a dresser and was not possessing any qualification to administer anaesthesia, but since the Family Planning Operation was the cause of nation, therefore, respondent No. 8, who was an experienced person was allowed to administer the anaesthesia in the tribal areas, and for which respondents cannot be held liable. The findings of the learned Court below are illegal and deserves to be set aside. In the opinion of this Court Dr. Ratnamala Thakur and other doctors who were in-charge of the hospital did not take care about the patient and allowed an incompetent person to administer the anaesthesia.

14. Appellants who are 5 in numbers, were aged 11 years to 2 years respectively at that time when they lost their mother at the time when they were badly in need of. No amount of compensation can fill-up the gap. It is not in dispute that Smt. Maltidevi Gidwani was working woman and was in the services of State Govt. In the fact and circumstances of the case the appeal deserves to be allowed and is hereby allowed. Judgment and decree passed by the learned Court below is set aside. Appellant shall be entitled for a sum of Rs. 1,50,000/- as compensation on account of death of their mother. This amount shall carry interest @ of 6% per annum from the date of suit till realization. In case the amount is not deposited within two months then the respondents (except husband of deceased) shall be liable to pay interest @ 12% per annum. The enhanced interest shall be recoverable from the officers, who shall be found at fault in not making the payment in time. The amount shall be distributed by the learned Court below between the appellants equally. Respondent/State shall be at liberty to recover the amount from any of the respondent, who shall be found negligent (except respondent No. 11). Respondents shall also bear the cost of appellants of both the Courts.