
(1993) 11 MAD CK 0039
In the Madras High Court

Dr. H. Ranganathan and Another

APPELLANT

Vs

V. Chandrasekar and Others

RESPONDENT

Date of Decision : 01-11-1993

Acts Referred:

Citation : (1994) 1 LW 68 : (1994) 1 MLJ 85 : (1994) WritLR 249

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—These petitions arise in O.S.A. Nos. 215 and 216 of 1993, which were preferred against the judgment and decree passed in

C.S. No. 690 of 1985, wherein a learned single Judge of this Court has granted general as well as special damages to the plaintiff/respondent of

Rs. 10,00,000 and Rs. 7,00,000 respectively with interest at the rate of 9% per annum from the date of the suit till the date of the decree and 6%

per annum from the date of the decree till the realisation with costs payable by the appellants. We have ordered in C.M.P. Nos. 14392 and

14393, dated 15.10.1993, as follows:

The appellants in O.S.A. Nos. 215 and 216 of 1993 have moved the above applications seeking stay of further proceedings pursuant to the

decree passed in C.S. No. 690 of 1985. Ordinarily, the appellate court is reluctant in staying money decrees including the decree by way of

compensation as general damages or special damages. The appellants herein, however, are a public limited company and the doctors employed for

the service to the patients admitted to the hospital run by the company, who are engaged, it is claimed, in providing to the patients consultations

and treatments including the surgery. The grant of the decree byway of general

as well as special damages has come in the case of the

plaintiff/respondent having been admitted for a health check up in the hospital, consultancy and treatment including surgery by the physicians and

surgeons engaged by the hospital for the plaintiff/respondent including the appellants in O.S.A. No. 215 of 1993.

The contentions raised on behalf of the appellants appear to take the court to the maxim *res ipsa loquitur*, the rule as to the onus of proof in such a

case and the requirements of proof by deductions from established facts etc.

3. Keeping in view of the special facts of this case, we are inclined to order as follows:

(i) Issue notice to the plaintiff/respondent only, as the other respondents are appellants either in O.S.A. No. 215 of 1993 or in O.S.A. No. 216 of

1993 as the case may be, to show cause why the prayer in the petitions be not granted returnable in four weeks.

(ii) The appellants shall furnish within fifteen days from today to the satisfaction of the court a bank guarantee drawn on a nationalised bank as

regards the decree money.

(iii) There shall be an order of stay of further proceedings pursuant to the decree passed in C.S. No. 690 of 1985 on the file of the Original Side of

this Court for the said period of 15 days and shall continue thereafter only on the condition that the appellants herein shall furnish bank guarantee as

above.

(iv) The bank guarantee furnished can be kept in either of the appeals but operate for both.

2. The plaintiff/respondent has, however, appeared with petitions for vacating the stay and has stated on facts that about nine years ago when he

was entering the prime of his life-a sportsman of international repute and recognition; receipt of numerous awards including the Arjuna award; a

gold medalist law graduate; an officer in the State Bank of India with a bright future and prospects of rising to the very top of his career, he went to

the appellant Hospital for a simple knee surgery with the assurance that he would be discharged in three or four days. He, however, emerged from

the hospital three months later a wreck, a cripple, a shell of the human being-his reason affected; voice affected; without powers of locomotion or

coordination-because on account of negligence during surgery in maintaining the

supply of Oxygen his brain got damaged and permanently impaired his faculties. The handicaps that he suffered, however, persisted and, according to him, the Hospital and Doctors, whose negligence alone caused such injuries to him, at first were apologetic, but the apology wore thin when they accepted that his (plaintiff/respondent) return to normal was a hopeless prospect. He has alleged in the affidavit as follows:

Dr. Pratap Reddy, the Chairman of the Hospital, at first, apologised for what had happened and assured me that he would find avenues for my treatment abroad whose expenses would be borne by the hospital. After sometime, he began to avoid me and tried to wash his and the hospital's hands of the whole matter leaving me to reconcile myself to the situation. I was, however, not willing to accept that nothing further could be done and with the invaluable help and assistance of family, friends and well wishers searched for treatment to improve my condition which was finally found to be available in the United States and Canada. Dr. Reddy's promises of the Hospital bearing the expenses for the treatment turned out to be as hollow as his promise to find out able treatment for my condition. It was my parents' and my savings, monies raised from my friends, family, well wishers and the philanthropy and generosity of the general public which enables me to get the expensive medical treatment abroad which has resulted in the improvement in my condition from being a total wreck and cripple to a stage of at least a semblance of normalcy. It was the kindness of all such persons and their good wishes which saw me through these terrible days.

He has stated that he filed the suit C.S. No. 690 of 1985 for compensation for the irreparable damage and untold suffering caused to him with pleas to settle the matter so that atleast his further medical expenses for treatment in India and abroad could be taken care of. According to him, the defendants/appellants took repeated adjournments in the suit and filed written statements after inordinate-delay. It took over eight years to complete the trial and a decree has been passed after taking into account the evidence and the law on the subject to which he has become entitled.

He has contended, accordingly, that over the years, it is an established precedent that ordinarily money decrees are not stayed and in exceptional cases where an order of stay is justified, the pre-condition is that the judgment-

debtor deposit the entire decretal amount and the decree-holder is permitted to withdraw such sum on conditions as to security as deemed fit.

3. The order staying the decree would show that the court was not unaware of the ordinary rule of not granting any stay of money decrees

including the decree by way of compensation of general damages or special damages. Although in terms Rules to Order 41 of the Code of Civil

Procedure, 1908, are not applied to appeals under Clause 15 of the Letters Patent of this Court, it has always been the practice to adopt in

principle the conditions in Rules 5 and 6 of the same and in granting stay, care is taken to see that no order for stay of execution is granted unless

the court is satisfied that substantial loss may result to the party applying for stay of execution unless the order is made, that the application has

been made without unreasonable delay and that security has been given by the applicant for the due performance of such decree or order as may

ultimately be binding upon him and in case it is decided that a stay is not granted, it is either left for the court which has passed the decree to make

suitable orders as to security or the appellate court itself makes an order to take such security which is found proper for the restitution of any

property which may be or has been taken in execution of the decree or for the due performance of the decree or the order of the appellate court.

The above rules have always guided this Court in deciding whether to order for stay of execution of decree as above or to decline to grant the stay

and instead order for security by the decree holder for the restitution or the due performance of the decree as the case may be.

4. The case in hand, however, has been first of its kind in this Court and the rules as to damages by way of compensation in case of the alleged

medical negligence is not settled by any authority of this Court. Judgments of this Court such as one in the case of *The Managing Director, Dunlop*

India Limited v. S.G. Krishnamurthy (1992) 1 L.W. 624 and the Supreme Court in the case of *Shyam Sunder and Others Vs. The State of*

Rajasthan, have recognised that the doctrine of *res ipsa loquitur* is attracted in the cases of the alleged negligence of the person under whose

management and control or at whose hands the accident occurs is in the know of the things and not the person who has suffered the injury. This

maxim is recognised, however, as a convenient label to apply to a set of

circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff was invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts hearing in the matter are at the outset unknown to him and often within the knowledge of the defendant. But, though the parties relating access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant - is as much at a loss to explain the accident or himself died in it does not preclude an adverse inference against him if the odds other-wise point to his negligence. The extent of this maxim sometimes has been that the mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. Learned Counsel for the appellants have readily acknowledged that medical negligence may be one professional negligence in which the doctrine of *res ipsa loquitur* would assume importance and the patient's position is such that he may very well not know and not be able to establish what treatment he received and how his injuries were caused. They have submitted that there must be a reasonable evidence of negligence and it should not be assumed that there cannot be either external and/or internal causes except any negligence on the part of the hospital and its doctors. According to them, the negligence must stem from any act or omission of the hospital and/or its doctors and found to have affected the patient adversely for attracting the maxim *res ipsa loquitur*. They have canvassed with the vehemance that the court ought to have taken notice of the statistical evidence as to operation and its success and should have asked for evidence from the plaintiff as to the alleged negligence. The main argument of the learned Counsel for the appellants for stay before us is that the court should not assume any negligence and that medical science has not yet reached the stage where the law ought to presume that a patient must come out of an operation better than he went into it. Although the treatment of the plaintiff was under the control of the defendant doctors, it was not under their sole control in the sense that they could see, observe and react to the immediate effects of the external application of such treatment but not such hidden and

unexplained mysteries of the plaintiffs own physiology which developed as a consequence of the treatment that he received at the hands of the hospital. Learned Counsel for the plaintiff/respondent has, however, contended that this should not be taken into account as a ground to stay the operation of the decree at this stage of the proceeding in the appeal, for, according to him, learned single Judge has gone by a specific evidence of one of the defendants who was in court not stated about any mistake in administration of the Oxygen, but in an earlier letter for the records he has recorded that the plaintiff suffered a condition of post-anoxic encephalopathy, i.e. damage to the brain after the condition of total lack of Oxygen.

There is no mistake in the inference of negligence on the part of the defendant doctors on such evidence and there is also no mistake in awarding compensation based on such evidence.

5. We have recorded that the issue before us is related to a profession that is involved in the medicare and care by way of such treatment that medical science has developed and in which there is always a risk of any fault in the system both of the treatment externally and in the physiology of the patient. Extent of the risk a patient runs is minimised by the quality and standard of the treatment and the knowledge of the health conditions of the patient which experts engaged in the profession ascertain by various medical tests. There can, however, be no doubt to the rule that professional negligence should be suitably punished and a patient, who has suffered on account of such negligence is compensated. When, therefore, a professional shall be held guilty of negligence and subjected to an action for compensation shall depend not merely on a reference to a maxim like *res ipsa loquitur* or a note in evidence or an inference based on some entry in a book as to the nature of the ailment and for subsequent development but on the assessment as a whole of the evidence as to the extent of liberty that can be recognised in a professional and the limitation under which a professional is required to function. The balance on the one hand as to such accountability of a professional and on the other hand with the sufferings of the patient on account of any negligence on the part of the professional alone shall make a court to reach to a proper appreciation of the facts and the law in this behalf.

6. Learned Counsel for the parties have drawn our attention to some of the

authorities that are cited in Jackson & Powell on Professional Negligence-Third Edition", particularly as respects medical negligence and our attention has been drawn to such authorities that show when inference of negligence is permissible and when inference of negligence is rebutted and it is suggested on behalf of the appellants that like the case in *Roe v. Minister of Health* (1954) 2 Q.B. 66, where patient suffered permanent paralysis from the waist down after being injected with a spinal anaesthetic at the defendant hospital, in the instant case the disaster, even if the evidence aforementioned is found against the appellant, occurred due to the failure in Oxygen supply instrument itself, should in a such case, they ask, negligence of this magnitude inferred and the appellants held liable for damages. Learned Counsel for the plaintiff/respondent has, however, no quarrel to the propositions of law in general. His submission is that the plaintiff/respondent has suffered substantially and it has been after a long wait proceedings in the trial court that a decree has been granted. There should be something more than a mere question as to the liability which has been decided against the appellants by the trial court, which should alone give any occasion to depart from the ordinary rule of not granting stay of money decree.

7. We however, see on the facts of the instant case that it is not a mere transfer of certain amount of money as consequence of the decree of the trial court that is involved in the instant case. We shall have in circumstances where there is no chance of any irreparable damage on account of a mere stay to see whether on such facts the court should not ensure an early hearing of the appeal and until disposal of the appeal keep the transfer of money by the defendants/appellants by way of execution of the decree to the plaintiff/respondent suspended until the disposal of the appeal. It is not an exaggeration when it is stated on behalf of the plaintiff/respondent that a life as successful as his has come to such sufferings not only in body but in mind as well and a compensation as big as the amount of decree of the trial court or even more will be insufficient to satisfy the loss that the plaintiff has suffered even partly. The trial court has found that the plaintiff/respondent has suffered as above on account of negligence on the part of the defendants. If the said finding is affirmed, even then the amount of compensation granted to the plaintiff/respondent shall appear wholly

inadequate and only in the nature of a solatium. A court, however, has to exercise restraint and avoid in such circumstances, in particular, being

influenced by emotionally diatibe and keep in, as much as possible, all emotions in check in approaching any claim of damages. One who has been

forced to live in anguish may not find anything just in the postponment of a decree granted to him until the same is affirmed by the appellate court.

But that should not prevent the court from also seeing the opposite view of a determination given to the hospital and the doctors, which may cause

to them indignity of being called negligent by a Court of Law. We have for the reasons aforementioned, chosen the option of keeping the order

dated 15th October, 1993 in C.M.P. Nos. 14392 and 14393 of 1993 in O.S.A. Nos. 215 and 216 of 1993 in force for a period of three months

and accordingly to order for listing of the appeals for final hearing before an appropriate Bench within three months. The appellants are directed to

make the appeal ready, prepare the typed set of papers and serve as required under the rules upon the learned Counsel for the plaintiff/respondent

within fifteen days from today. It shall be open to the plaintiff/respondent to file any papers which are found omitted by the defendant/appellants

within fifteen days of the service of the typed set of papers upon his learned Counsel.

8. It is accordingly ordered. The order dated 15th October, 1993 passed in C.M.P. Nos. 14392 and 14393 of 1993 in O.S.A. Nos. 215 and

216 of 1993 is made absolute subject to the hearing of the appeal within three months as directed.