

(1995) 03 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11955 of 1994

Jasbir Kaur and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 08-03-1995

Acts Referred:

Constitution of India, 1950 — Article 21
Evidence Act, 1872 — Section 114

Citation : (1995) ACJ 1048 : AIR 1995 P&H 278 : (1995) 110 PLR 343

Hon'ble Judges : S.S. Sudhalkar, J; R.P. Sethi, J

Bench : Division Bench

Advocate : J.C. Verma and Rajeev Godara, for the Appellant; S.S. Shergill, DAG, for the Respondent

Judgement

R.P. Sethi, J.—The tragic facts of the case and barbaric attitude of the respondent-authorities reminds one of the primitive mediaeval age when man was treated like an animal and deprived of the virtues of a civilised society. At this stage of the winding up of the twentieth century and when we are at the door steps of the twenty-first century, the heads of civilised society would bow in shame to know about the facts of the case and the treatment meted out to a newly born child who is alleged to have been taken away by a cat in a Government owned and managed hospital. The woeful story has been narrated by the parents of the unfortunate child who have in desperation prayed for an inquiry through the Central Bureau of Investigation and in frustration have prayed for the grant of compensation for rehabilitation and upbringing of the said child. It is unfortunate that despite admitting the facts narrated in the petition, the respondents have chosen to resist this petition on frivolous grounds and false pretexts.

2. The petitioner Jasbir Kaur, mother of the unfortunate child is shown to have been admitted in Shri Guru Teg Bahadur Hospital, Amritsar, on 24th June, 1993, allegedly in a serious condition of leakage. She was subjected to Sonography and

after caesarean operation on 25th June, 1993, a healthy normal male child is stated to have been born to her at 6.00 p.m. The operation is stated to have been conducted by Dr. Harinder Kaur. It is submitted that no arrangements are made for any cradle for separately keeping the children born through caesarean operation for the people belonging to lower strata, termed as poor. The parents of the child and the relations were told that the mother and child should not sleep together on one bed because of the fear of infection. Under these circumstances, the child was kept with the relative of the petitioners on the intervening night of 25th-26th June, 1993. The electric light is alleged to have gone off suddenly in the maternity ward and the attendant sleeping with the child found the child missing from her side. Hue and cry was raised and search was made in the hospital premises, resulting in the discovery of the child in a profusely bleeding condition, with one eye totally gouged out along with the eyeball. The child in such a condition was found near the wash basin of the bathroom. The matter was brought to the notice of the authorities for holding an inquiry as the parents genuinely and bonafidely believed that their child had been replaced with a damaged eye child. As no action was taken, Smt. Vimla Dang, M.L.A., from Amritsar, was approached who thereafter made inquiries and wrote letters to the authorities for taking action in the matter. Despite registration and investigation of the case, no action was taken by any of the authorities, of the respondent-State, forcing the petitioners to approach this Court for the grant of relief by handing over the case to the Central Bureau of Investigation, an independent agency, for investigating the case in which the child of the petitioners was allegedly replaced or exchanged with another child or to ascertain the circumstances in which the child is stated to have been lifted by a cat and his one eyeball was gouged out. It was further prayed that the hospital authorities be directed to make proper arrangements and ensure proper working in the hospital and not to play with the lives of the human children by exposing them to be wasted at the hands of the animals like cats. It was alternatively prayed that the petitioners be awarded a compensation to the extent of rupees ten lakhs for negligence, callousness and carelessness of the respondents.

3. In reply, it is submitted that a preliminary inquiry was conducted in which it is stated to have been established that incident had occurred due to the negligence of the family members of the newly born child. Even after recording of F.I.R. No. 112 dated 8th July, 1993, the matter was investigated and it was found that the allegations made were false and frivolous. It is submitted that the Inquiry Officers appointed in the case have totally ruled out the possibility of any of the circumstances in which the child of the petitioners was allegedly replaced or exchanged with another injured child by the doctor/staff of Shri Guru Teg Bahadur Hospital, Amritsar. The Inquiry Officers also ruled out the possibility of taking out the eye of the newly born child for transplantation. The petitioners are stated to be not entitled to any compensation in view of the alleged admission made by them in their statements recorded on 26th June, 1993. The admission of the petitioner mother in the hospital and the birth of a normal healthy newly

born child is admitted. It is submitted that at the time of his birth the child did not have any injury on any part of his body and no negligence or callousness can be attributed to the respondents in treating the patient in the way as alleged in the writ petition. It is submitted that the patients are admitted and treated in the hospital irrespective of their caste, creed and economic status. It is, however, admitted that the electricity went off suddenly during the night intervening 25th-26th June, 1993. It is, further, submitted that at that time the grandmother of the child went outside to fetch a hand fan from her husband leaving the child with the sister-in-law of Jasbir Kaur, petitioner. At that time, the staff nurse on duty heard the cries of a child from the adjacent bathroom where she and class IV employees on duty with the help of the relatives of petitioner No. 1 and other patients searched for the child with the help of a torch and found the child injured in the said bathroom. It is contended that no fundamental or legal right of the petitioners has been infringed as claimed in the writ petition and the same is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records.

5. The learned counsel appearing for the petitioners pleaded before us the helplessness of the petitioners in pursuing the matter any further by getting an inquiry conducted through the Central Bureau of Investigation. The petitioners, on account of their poverty, argued the learned counsel, apprehend that further proceedings or inquiry in the case may not deprive them even of the child who is being brought up by them at present. It is further submitted that the handicapped child may ultimately grow with the impression of being a stranger child to the family if the patitioners fail to get any child in exchange. It is submitted that on account of their social status, poverty and the delay caused in the case, the petitioners may not be in a position to substantiate the allegations so far as the exchange or replacement of the child is concerned. Relief for banding over the case to the Centra] Bureau to Investigation for further investigation is, therefore, neither insisted nor ganted.

6. The admission of petitioner No. I in the Shri Teg Bahadur Hospital, Amritsar, and the delivery of a normal healthy male child is not disputed by the respondents. The child being injured by a cat in the hospital premises is also admitted. The only ground of resisting the prayer of the petitioner for compensation is that the injury caused to the infant child is attributable to the negligence and carelessness of the attendants of the patient and not to the employees of the respondents. Shri Guru Teg Bahadur Hospital, Amritsar, is admittedly a Government owned and managed hospital. The protection, safety and provision for treatment in the said hospital is the responsibility of the respondent State for which none else can be blamed. It is not disputed that none else than the respondents are responsible for the safety of the patient and the newly born child in the hospital. The prevalent system in the hopital and the law cast a duty upon the respondents to properly maintain and provide medical facilities to the mother and the infant child. The failure on the part of the

respondents to properly maintain and provide medical facilities makes liable to compensate, if an injury not connecting with the treatment is caused either to the patient or to the newly born child. Such injury in the Government owned and managed hospital would, in law, be attributable to the negligence of the respondents and such a presumption could be rebutted by producing positive evidence that they had been maintaining the hospital and its services in accordance with the standards accepted and minimum safeguards provided. As and when it is proved that a citizen received such an injury in a Government owned and managed hospital, there is a presumption of fact that there had been negligence of proper care and caution on the part of the hospital entrusted with the job of providing medical facilities and ensuring safety to the lives of the patients. The maxim *res ipsa loquitur* is a principle which aids the Court in deciding as to the stage at which the onus shifts from one side to the other, where a particular state of affair is shown to be under the management of a department or their servants and the accident takes place which in the ordinary course of things would not happen, it affords reasonable evidence in the absence of explanation by the respondents that the accident arose for want of care. Winfield in his famous Treatise on Tort, has mentioned two requirements to attract the above principles. They are (i) that the "thing" causing the damage be under the control of the defendant or his servants, and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence. This principle has been approved and recognised by the Supreme Court of India in *Syad Akbar Vs. State of Karnataka*, (1970) 1 SCR 1000 (Para 19) wherein it was held:

"The rule of *res ipsa loquitur* in reality belongs to the law of Torts. Where negligence is in issue, the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim *res ipsa loquitur* may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The event or accident must be of a kind which does not happen in the ordinary course of things, if those who have the management and control use due care. Further the event which caused the accident must be within the defendants' control. The reasons for this second requirement is that where the defendant had control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred."

7. Testing on the touchstone of the principle laid down by the renowned jurists of English Courts and the Supreme Court of India and on admitted facts it is established that the child was taken away by the cat and was recovered from the bathroom. The taking away of the child and the consequent injury is attributable only to the negligence of the staff members of the hospital who were under a moral and legal obligation to provide security to the patient admitted therein and their newly born children.

8. Article 21 of the Constitution of India provides that no person shall be deprived of his life and property except according to the procedure established by law. The term "life" used in Article 21 is not only restricted to the mere nominal existence but extends to the inhibition against its deprivation to all those limits and faculties by which life is enjoyed. This Article is wide and of far reaching consequences. As and when life in any form or to any extent is taken away or endangered by any functionary of the State, a duty is cast upon the State representing the will of the people to compensate the victim by granting adequate compensation. The monarchical rule has to be distinguished from democratic set up and the State cannot shirk its responsibility to protect the life, liberty and property of the citizens. The maintenance of law and order and providing adequate facilities in the Government Hospitals is the responsibility of the Government who cannot abdicate its functions and allow the life and liberty of citizens to be in jeopardy on technical pleas and false pretexts as projected in the reply of the respondents. We are, therefore, convinced that the respondent State is liable to compensate the petitioners for the damage done to their child on account of the negligence of the staff of the hospital owned and managed by the respondent State.

9. Even though the petitioners have claimed a sum of rupees ten lakhs as compensation, we are of the opinion that though the damage caused to the child is of a permanent nature, yet the interests of justice would be served if a reasonable amount is awarded as compensation for the up-bringing and education of the said child for his ultimately respectable settlement in the society. In our opinion, the award of rupees one lakh as damages would meet the ends of justice. We hold the child entitled to the payment of rupees one lakh as compensation for the injury caused to his person. The aforesaid amount of compensation of rupees one lakh shall be paid by the respondents to the petitioners who would deposit the aforesaid amount in some nationalised bank in the form of a fixed deposit receipt payable to the child on his attaining the age of majority. The interest payable on the aforesaid amount shall periodically be paid to both the petitioners for the maintenance of the child, provided they live together. If the petitioners ever decide to dissolve their marriage, appropriate directions shall be obtained from the Court for the disbursement of the amount of interest in favour of the child. With the above directions, this petition is disposed of.

10. Order accordingly.