
(2014) 09 DEL CK 0277
In the Delhi High Court
Case No : W.P. (C) 7178/2012

Mala Devi APPELLANT
Vs
The State Govt. of NCT of Delhi RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0277

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Anwar Rafiq, Advocate for the Appellant; Ferida Satarawala, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition claiming compensation for a sum of Rs. 35,50,000/- to bring up her third child who is alleged to have been born because of medical negligence on the part of the doctors in performing the sterilization operation on the petitioner. The petitioner has further claimed an additional sum of Rs. 25,00,000/-.

2. The controversy to be addressed is whether in the facts and circumstances of the case, medical negligence on the part of the attending doctors at Lok Nayak Hospital (respondent no.2) is established and if so, whether the petitioner would be entitled to any compensation for the same.

3. Briefly stated, the facts are that the petitioner had approached the doctors at Lok Nayak Hospital for a sterilization procedure after delivery of her second child. It is stated that an operation was performed on the petitioner at the Lok Nayak Hospital (respondent no.2) and a sterilization certificate dated 03.06.2010 was also issued to the petitioner.

4. Apparently, the sterilization procedure was not successful and the petitioner

conceived her third child in January, 2012. According to the petitioner, she was informed of her pregnancy on 16.03.2012. The petitioner chose to continue with the pregnancy and delivered her third child on 02.10.2012.

5. The learned counsel for the petitioner has contended that the procedure adopted for sterilization was of ligation fallopian tubes by modified pomeroy's method. He states that the possibility of failure of this method is the negligible as it entails ligation of fallopian tubes. The learned counsel for the petitioner further submitted that the doctors were clearly negligent in performing this operation as subsequently, it was found that the right side fallopian tube was intact. The petitioner referred to petitioner's discharge slip of 05.10.2012 and urged that the same indicated that no procedure was conducted on the petitioner's right side fallopian tube.

6. The learned counsel for the respondent has contended that there was no negligence on the part of the attending doctors who performed the operation on the petitioner and there was always a chance of the sterilization operation being unsuccessful. She referred to the "Application for Vasectomy/tubectomy operation and letter of consent", signed by the petitioner and contended that the petitioner was always aware that there was a chance that the operation would be a failure.

7. I have heard the learned counsel for the parties.

8. I am unable to accept the contention that the negligence of attending doctors is established in the given facts and circumstances of this case. There is no material on record which would justify the finding that the attending doctors were negligent in performing the sterilization operation on the petitioner. The petitioner's discharge slip issued by the hospital on 05.10.2012 also does not lead to the conclusion that no procedure was carried out on the right side fallopian tube of the petitioner. The noting in the discharge slip - "R side tube seen in entire length intact method legated by modified pomeroy and technique" does not clearly establish that no procedure had been carried out on the right side fallopian tube of the petitioner.

9. The "Application for Vasectomy/tubectomy operation and Letter of Consent" clearly indicates that the petitioner was aware not only of the chances of failure of the procedure undertaken by her but the same also records that the petitioner was agreeable to receive Rs. 20,000/- in the event the operation failed. The relevant extract from the said consent form is quoted below:-

"(g) I know that there are some chances of the operation being unsuccessful for which neither I nor my family members or any other person will make the doctor/Health facility centre conduction operation responsible.

(h) In case after the vasectomy/tubectomy operation, my husband/wife have menstruation period, I will inform the Doctor/Health facility centre about the same within 2 weeks and will obtain the facility of free abortion.

(i) If the vasectomy/tubectomy operation fails, in that condition Oriental Insurance Co. Ltd. will pay to me a sum of Rs.20,000/- (rupees twenty thousand) as damages under family planning insurance scheme of Government of India, which will be acceptable to me.

(j) If I after the failure of vasectomy/tubectomy operation becomes pregnant and fails to get abortion within 2 weeks then I under any law will not be entitled to file any suit for any other compensation other than under the Family Planning Insurance Scheme for compensation for the maintenance of the child."

The petitioner was thus, fully conscious of the risks of failure of the sterilization procedure.

10. The Supreme Court in the case of Jacob Mathew Vs. State of Punjab and Another, approved the tests as laid down in the case of Bolam v. Friern Hospital Management Committee: (1957) 2 All ER 118 (QBD) with respect to medical negligence and laid down the following principles:-

"(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal and Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".

(2)... A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. ...

(3) 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 standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed

of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence."

11. In *State of Punjab Vs. Shiv Ram and Others*, , the Supreme Court following the decision in *Jacob Mathew* (supra) held as under:-

"We are, therefore, clearly of the opinion that 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 or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to satisfy Bolam's test. 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 was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee."

12. In view of the above, an unsuccessful sterilization procedure does not necessarily imply that the attending doctors were negligent. As stated earlier, the contention that no procedure had been carried on by the doctors on petitioner's right side fallopian tube is also not clearly established in given facts.

13. The petitioner had unequivocally agreed that she would not be entitled to file any suit for any compensation other than under the Family Planning Insurance Scheme. It was also clearly stated in the consent form that she would not seek compensation for maintenance of the child. In view of her accepting the terms for the operation conducted by respondent no.2, the claim for petitioner for upbringing a child or for compensation on account of failure of the sterilization procedure cannot be entertained in these proceedings. However, the petitioner would be entitled to a sum of Rs. 20,000/- under the Family Planning Insurance Scheme of respondent no.1.

14. The petition is, accordingly, dismissed. The parties are left to bear their own costs.