

(2020) 03 MP CK 0053

In the Madhya Pradesh High Court

Case No : Writ Petition No. 26704 Of 2019

Naval Singh Jatav

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Code Of Civil Procedure, 1908 — Section 2(1)(o), 3, 13(2)(b), 13(4)

Citation : (2020) 03 MP CK 0053

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Arshad Ali, P.S. Raghuvanshi

Final Decision : Disposed Off

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking the following relief:-

7.1 For a writ of mandamus or any other writ, order or direction to the Respondents to provide Rs. 5 lakhs compensation about death of wife and

child to the Petitioner to compensate his for grave violations of his fundamental rights to life, health, dignity, and equality as well as suffering due to

apathy of the Respondents No. 1, 2 and 3 causing great mental, emotional and physical trauma to his.

7.2 That, respondent may kindly be directed to review death of petitioner wife as well as child and also directed to submit review report of death to the petitioner as well as Hon'ble High Court.

7.3 That, respondent further directed to issue birth certificate of child and death certificate of child to the petitioner.

7.4 That after the failure of the duties of state medical facilities, the petitioner's

wife gave birth to a child in maternity hospital, Kamla Raja, Gwalior

without proper medical care. Now it became the responsibility of the state to take care of the children and mothers.

7.5 For a permanent injunction against the carelessness of State health services in Madhya Pradesh.

7.6 For the issuance of a Writ of Mandamus establishing that target quotas violate women's fundamental right to health and autonomous decision

making pertaining to proper staffing and posting of the medical employee. she fundamental right to life established in Article 21 of the Constitution of

India.

7.7 For such further and other orders as the court may deem fit in the circumstances of the present case.â??

It is the case of the petitioner that his wife was pregnant and as her labor pains started, therefore, she was admitted on 17.07.2019 at 11:45 AM in

Kamla Raja Hospital, Gwalior, where she gave birth to a child at 08:30 PM. Unfortunately, the mother and the child expired. It is the case of the

petitioner that doctors as well as paramedical staff of the hospital were negligent in performing their duties and they did not attend the patient properly

in spite of the various requests made by the petitioner and his family members, therefore, the respondents be directed to pay the compensation to the

tune of Rs.5,00,000/- for the death of wife and child of the petitioner and the respondents may also be directed to review the death of wife and child of

the petitioner as well as to issue birth and death certificate of the child and now the State should take the responsibility of children and mothers and the

permanent injunction be issued against the carelessness of the State Health Services in M.P. etc.

Considered the submissions made by the counsel for the petitioner.

Whether the death of the wife and child of the petitioner was the direct consequence of medical negligence or not, is a disputed question of fact.

The Supreme Court in the case of C.P. Sreekumar (Dr.), MS (Ortho) Vs. S. Ramanujam, reported in (2009) 7 SCC 130 has held as under:-

â??27. The basic principles under which a case of medical negligence as a criminal offence as also a tort has to be evaluated has been succinctly laid

down in Jacob Mathew v. State of Punjab. One of the primary arguments raised by the respondent herein is that the appellant Dr. C.P. Sreekumar,

though qualified in Orthopaedics, did not have the basic skill to carry out a hemiarthroplasty or an internal fixation and for that reason was not competent to perform the procedure.

28. In Jacob Mathew case this Court adopted the test laid down in Bolam v. Friern Hospital Management Committee in which it has been observed as under: (WLR p. 586)

“where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or

not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled

man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well-established law that it is sufficient if

he exercises the ordinary skill of an ordinary competent man exercising that particular art.”

This Court then observed that this judgment in Bolam case had been followed repeatedly not only in India but in other jurisdictions as well and that it was the statement of law as commonly understood today.

29. In paras 24 and 32 of Jacob Mathew case it has been observed thus: (SCC pp. 21 & 23-24)

“24. The classical statement of law in Bolam case has been widely accepted as decisive of the standard of care required both of professional men

generally and medical practitioners in particular. It has been invariably cited with approval before the courts in India and applied as a touchstone to test

the pleas of medical negligence. In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary

competent medical practitioner exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord

with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when

assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when

the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at

that point of time on which it is suggested as should have been used.

32. At least three weighty considerations can be pointed out which any forum trying the issue of medical negligence in any jurisdiction must keep in

mind. These are: (i) that legal and disciplinary procedures should be properly founded on firm, moral and scientific grounds; (ii) that patients will be

better served if the real causes of harm are properly identified and appropriately acted upon; and (iii) that many incidents involve a contribution from

more than one person, and the tendency is to blame the last identifiable element in the chain of causation, the person holding the â??smoking

gunâ??.â??

(emphasis supplied)

These observations postulate the underlying principle that too much suspicion about the negligence of attending doctors and frequent interference by

courts would be a very dangerous proposition as it would prevent doctors from taking decisions which could result in complications and in this situation

the patient would be the ultimate sufferer.

30. Jacob Mathew case was followed in State of Punjab v. Shiv Ram which was a case of a failed tubectomy leading to a plea of medical negligence.

This is what this Court had to say in para 33: (Shiv Ram case, SCC p. 17)

â??33. â?| A doctor, in essence, needs to be inventive and has to take snap decisions especially in the course of performing surgery when some

unexpected problems crop up or complication sets in. If the medical profession, as a whole, is hemmed in by threat of action, criminal and civil, the

consequence will be loss to the patients. No doctor would take a risk, a justifiable risk in the circumstances of a given case, and try to save his patient

from a complicated disease or in the face of an unexpected problem that confronts him during the treatment or the surgery. It is in this background

that this Court has cautioned that the setting in motion of the criminal law against the medical profession should be done cautiously and on

the basis of reasonably sure grounds. In criminal prosecutions or claims in tort, the burden always rests with the prosecution or the

claimant. No doubt, in a given case, a doctor may be obliged to explain his conduct depending on the evidence adduced by the prosecution

or by the claimant. That position does not change merely because of the caution advocated in Jacob Mathew¹ in fixing liability for

negligence, on doctors.â??

(emphasis supplied)

31. In *Samira Kohli v. Dr. Prabha Manchanda* the basic issue was as to the principle governing consent to be taken from a patient prior to any invasive procedure. We find, however, that in the present case, the question of consent has not been raised by the respondent and on the contrary the case seems to be that the consent had, in fact, been taken. Even in his arguments the respondent did not deny lack of consent and on the contrary (as Mr Ranjit Kumar has pointed out) in the advocate's notice issued to Dr. C.P. Sreekumar, the appellant on 19-11-1992, the fact that the respondent had agreed to the operation, has been admitted.....

Thus, it is clear that too much suspicion about the negligence of attending doctors and frequent interference by the Courts would be a very dangerous position as it may prevent the doctors from taking decision which could result in complications. Further, the burden lies on the complainant to prove the medical negligence of the doctors which undisputedly is a pure disputed question of fact.

The Supreme Court in the case of *Indian Medical Association Vs. V.P. Shantha and others* reported in (1995) 6 SCC 651 has held as under:-

37. As regards the procedure to be followed by these agencies in the matter of determination of the issues coming up for consideration, it may be

stated that under Section 13(2)(b), it is provided that the District Forum shall proceed to settle the consumer disputes (i) on the basis of evidence

brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint,

or (ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case

within the time given by the Forum. In Section 13(4) of the Act it is further provided that the District Forum shall have the same powers as are vested

in the civil court under the Code of Civil Procedure while trying a suit in respect of the following matters:

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness and

(vi) any other matter which may be prescribed.â??

The same provisions apply to proceedings before the State Commission and the National Commission. It has been urged that proceedings involving

negligence in the matter of rendering services by a medical practitioner would raise complicated questions requiring evidence of experts to be

recorded and that the procedure which is followed for determination of consumer disputes under the Act is summary in nature involving trial on the

basis of affidavits and is not suitable for determination of complicated questions. It is no doubt true that sometimes complicated questions requiring

recording of evidence of experts may arise in a complaint about deficiency in service based on the ground of negligence in rendering medical services

by a medical practitioner; but this would not be so in all complaints about deficiency in rendering services by a medical practitioner. There may be

cases which do not raise such complicated questions and the deficiency in service may be due to obvious faults which can be easily established such

as removal of the wrong limb or the performance of an operation on the wrong patient or giving injection of a drug to which the patient is allergic

without looking into the out -patient card containing the warning (as in *Chin Keow v. Govt. of Malaysia*) or use of wrong gas during the course of an

anaesthetic or leaving inside the patient swabs or other items of operating equipment after surgery. One often reads about such incidents in the

newspapers. The issues arising in the complaints in such cases can be speedily disposed of by the procedure that is being followed by the Consumer

Disputes Redressal Agencies and there is no reason why complaints regarding deficiency in service in such cases should not be adjudicated by the

Agencies under the Act. In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to

approach the civil court for appropriate relief. Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in

derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the civil court for necessary

relief. We are, therefore, unable to hold that on the ground of composition of the

Consumer Disputes Redressal Agencies or on the ground of the procedure which is followed by the said Agencies for determining the issues arising before them, the service rendered by the medical practitioners are not intended to be included in the expression "service" as defined in Section 2(1)(o) of the Act.

38. Keeping in view the wide amplitude of the definition of "service" in the main part of Section 2(1)(o) as construed by this Court in Lucknow

Development Authority, we find no plausible reason to cut down the width of that part so as to exclude the services rendered by a medical practitioner

from the ambit of the main part of Section 2(1)(o).".

Therefore, the petitioner has an efficacious remedy of approaching the District Consumer forum for redressal of his grievance. This Court while

exercising the power under Article 226 of the Constitution of India cannot adjudicate the disputed question of fact as to whether there was any

medical negligence on the part of the doctors or not.

Accordingly, this petition is disposed of with liberty to the petitioner to approach the consumer forum for redressal of his grievance.