
(2015) 09 MAD CK 0045

In the Madras High Court

Case No : W.P. (MD) No. 8861 of 2013 and M.P. (MD) No. 1 of 2013

P. Arumugam

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Indian Medical Council Act, 1956 — Section 33

Citation : (2016) 1 LW 373

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : V. Panneer Selvam for C.S. Associates, for the Appellant; N.S. Karthikeyan, Additional Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—MEDICAL MIRACLE, is, this case, for, the wife of the petitioner, who was admitted in the third respondent Hospital on 19.09.1989, complaining abdomen pain and successfully operated in the third respondent Hospital for "Excision & Removal of Retroperitoneal Hydatid cyst" on 11.10.1989, continues to survive with the left out foreign articles in her abdomen for nearly 25 years.

2. Seeking swift action for treating her wife and to compensate the agony undergone by her all along, the petitioner moves before this Court with the present writ petition.

3. On 03.06.2013, when the matter was taken up for hearing, this Court ordered notice of motion returnable by 20.06.2013 and passed the following order:

"2. The petitioner approached this Court seeking a writ of Mandamus directing the respondents to pay adequate compensation for the negligence by the third respondent while performing the surgery on the petitioner's wife by name Indirani, in the third respondent hospital on 11.10.1989. After the operation, the petitioner's wife has been complaining the pain and she has been taking

treatment. As the pain became quite unbearable, the petitioner's wife was advised to take C.T. Scan and accordingly, on 01.06.2013, C.T. Scan was taken on the petitioner's wife which revealed the presence of foreign body. The C.T. Scan report, dated 01.06.2013, reads as follows:

"IMPRESSION:

1. Retained foreign body (broken surgical forceps) noticed in RIF region with severe adhesions, foreign body reaction and clumping of bowel loops seen.

2. Calcified foreign body reaction/hematoma encircling the tip of forceps anteriorly extending upto symphysis pubis.

3. Prima facie, from the reading of the above, it is clear that the foreign body was left while performing the operation and the petitioner's wife has developed unbearable pain because of the foreign body. Hence, it is appropriate to direct the third respondent, namely, the Dean, Government Rajaji Medical Hospital, Madurai, to admit the petitioner's wife namely Indirani, and give appropriate treatment including surgery for removal of foreign body forthwith.

4. Mr. D. Muruganantham, learned Additional Government Pleader takes notice for the respondents 1 to 3 and undertakes to instruct the third respondent to admit the petitioner's wife in the Hospital for treatment in the special ward."

4. Thereafter, this Court, by order dated 21.06.2013, has observed the following:

"Pursuant to the order passed by this Court on 03.06.2013, the petitioner's wife Indirani was admitted in the 3rd respondent hospital and she was operated on 12.06.2013 and the foreign body, which was retained in the abdomen, was removed and she is now healthy. This is evident from the communication dated 20.06.2013 sent by the Dean of the Government Rajaji hospital. The above fact is recorded. Call the matter on 17.07.2013 for filing counter in the main writ petition."

5. Now, it is seen that the second part of the relief sought for by the petitioner has been granted and the wife of the petitioner is cured of her illness.

6. Mr. V. Panneer Selvam, learned Counsel for the petitioner submitted that the wife of the petitioner has been made to suffer a lot for nearly 25 years, but, because of the negligence on the part of the Medical Officer concerned who operated her on 11.10.1989 for her complaint for abdomen pain and she has been put to great mental agony, besides physically too. Therefore, the respondents have to compensate properly for her pain and sufferings in accordance with law, in the light of the decision of this Court in R. Shanmugakani and others v. The Government of Tamil Nadu, rep. by its Principal Secretary and others reported in CDJ 2014 MHC 3240 [W.P. (MD) No. 13867 of 2011], he argued.

7. Mr. N.S. Karthikeyan, learned Additional Government Pleader appearing for the respondents, placing reliance on the counter affidavit filed by the third

respondent, contended that the wife of the petitioner is now healthy and she is doing well. However, he denied the allegation of medical negligence on the part of the third respondent authorities stating that the petitioner did not take regular check-ups after the operation done on her and she took further treatments in the private hospital for all these years and now, suddenly, the said allegation has been made by the petitioner and hence, he prayed for rejecting the claim for compensation to the wife of the petitioner.

8. I have considered the rival submissions and perused the materials available on record.

9. Hope of needy people in saving the priceless souls, is the Government Hospital alone, wherein, the wife of the petitioner got operated by leaving foreign particles to remain in her abdomen for nearly 25 years.

10. As per the direction of this Court, the immediate attention has been drawn on the wife of the petitioner by the third respondent authorities and all medical treatments have been given to her and she is beyond the line of danger.

11. What the petitioner, now, seeks, is the compensation for the pain and sufferings undergone by his wife for all along with the said foreign particles inside her abdomen.

12. In *R. Shanmugakani and others v. The Government of Tamil Nadu*, rep. by its Principal Secretary and others reported in CDJ 2014 MHC 3240 [W.P. (MD) No. 13867 of 2011], this Court had an occasion to deal with the issue regarding medical negligence and elaborately discussed the provisions of law in that regard and compensated the victim therein. It is appropriate to refer to the relevant portions hereunder:

"16. Doctor is the best friend of a man, who is suffering from sickness. A poor man, who could not take treatment in a private hospital, comes to the Government Hospital, with a fond hope that he would get treatment from the Government Hospital and return back home, without disease. In the case on hand, the Doctor, who conducted surgery, due to the callous attitude, had taken away the precious life of a woman, which has to be condemned and cannot be permitted in a civilized society. Such type of negligence really put to peril of a layman. A doctor, who treats a patient, should take sufficient care of normal prudence, which is the legitimate expectation of every patient, who approaches the hospital for treatment.

17. In our Country, majority of citizens, requiring medical care and treatment, fall below the poverty line. Most of them are illiterate or semi-literate. They cannot comprehend medical terms, concepts, and treatment procedures. They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals, after admission, for want of beds or patients waiting for days on the roadside for admission or a mere

examination, is a common sight. For them, any treatment with reference to rough and ready diagnosis based on their outward symptoms and doctors experience or intuition is acceptable and welcome so long, as it is free or cheap; and whatever the doctors decide as being in their interest, is usually unquestioningly accepted. They are a passive, ignorant and uninvolved in treatment procedures.

18. The poor and needy face a hostile medical environment inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, utter lack of qualitative treatment, corruption, callousness and apathy. Many poor patients with serious ailments, like heart patients and cancer patients, have to wait for months together for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. What choice do these poor patients have? Any treatment of whatever degree, is a boon or a favour, for them. The stark reality is that for a vast majority in the country, the concepts of informed consent or any form of consent, and choice in treatment, have no meaning or relevance.

19. At this juncture, it is relevant to note that this Court is conscious of the fact that in the decision in *Martin F. D'Souza Vs. Mohd. Ishfaq*, , the Supreme Court held that if a doctor treated a patient with ordinary care, then anything happens to the patient, the doctor concerned cannot be blamed, unless it is established that there is a criminal negligence on the part of the doctor in the manner known to law. In the case on hand, the negligence is not denied and the negligence on the part of the doctor is clearly established by postmortem report. But, the question is against whom such negligence could be attributed.

20. Article 21 of the Constitution of India guarantees right to life, which includes right to get meaningful health care, especially during maternity/delivery period. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21 .

21. The Code of Medical Ethics drawn up with the approval of the Central Government under Section 33 of the Indian Council Medical Act and observed is as follows:-

"Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise cannot be sustained and, therefore, must give way."

22. On the basis of the evidence on record and arriving at a categorical finding that the death had occurred due to the negligence on the part of the doctors, this

Court has computed the compensation. As per the Judgment of the Hon'ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , 50% of the actual salary should be added towards future prospects, by adopting a rule known as "Rule of Thumb", provided the deceased was below 40 years. It is not in dispute that in the case on hand, at the time of death, the deceased was hardly 23 years old. As per the decision rendered in Sarla Verma's case, multiplier to be adopted is 17.

23. The deceased was earning a sum of Rs. 4,000/-. Having regard to the age of the deceased, salary of the deceased, family status, the other attendant circumstances and as per the calculation memo produced by the learned counsel appearing on behalf of the petitioners, this Court is of the considered view that the petitioners are entitled for a sum of Rs. 12,55,000/- under the following heads:-

24. The first respondent had already sanctioned a sum of Rs. 2,50,000/- in favour of the petitioners 2 and 3, vide G.O. MS. No. 81, Health and Family Welfare Department, dated 25.04.2003. Therefore, the petitioners are entitled for a compensation of a sum of Rs. 10,05,000/-, which is rounded off to Rs. 10,00,000/- and the same shall be paid by the first respondent, within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondents 1 to 3 to initiate appropriate proceedings against the respondents 4 to 6, so as to fix the liability, and thereafter, recover the said amount from them, after conducting a thorough enquiry.

25. The Writ Petition is allowed, as indicated above. No costs."

13. From the above judgment, it is clear that the present case is akin to the facts therein and therefore, keeping in mind the above decision rendered by me, I am of the considered opinion that the wife of the petitioner has to be compensated in accordance with law.

14. In view of the emergent situation that prevailed regarding the health of the wife of the petitioner, the petitioner filed the present writ petition before approaching the authorities seeking the relief sought for, in the present writ petition and it is found that the petitioner did not make any representation to the authorities so far. At present, there are change of circumstances and it is for the petitioner to move before the authorities concerned for compensation for the agony undergone by his wife for all along.

15. Therefore, this writ petition is disposed of, with the following directions:

(i) The petitioner is directed to submit a representation to the second respondent seeking compensation for the medical negligence on the part of the third respondent authorities, along with all necessary documentary evidence in support of his claim, within a period of two weeks from the date of receipt of a copy of this order;

(ii) On receipt of the same, the second respondent shall consider the claim of the

petitioner for compensation and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter.

(iii) It is open to the respondents to initiate appropriate proceedings against the erred Medical Officers, in order to fix the liability, and conduct a detailed enquiry in that regard and thereafter, recover the compensation amount from the Medical Officer concerned. Consequently, the connected miscellaneous petition is closed. No costs.