

(2013) 02 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 25697 of 2012 and M.P. No. 1 of 2012

S. Mary

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

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

Citation : (2013) 2 ACC 566 : (2013) 2 CTC 332

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : N. Subramani, for the Appellant; Haja Mohideen Gisthi, Central Government Standing Counsel No. 1. D. Raja, Additional Government Pleader Nos. 2, 3, 5-7 and T. Arunan, Advocate No. 4., for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This Writ Petition is filed with a prayer to issue a Writ of Mandamus directing the Respondents to consider

Petitioner's Representations dated 1.7.2011, 18.7.2011 & 14.11.2011 and consequently direct the Respondents 1 & 2 to pay compensation of

Rs. 10 lakhs to the Petitioner for the negligent acts done by the staffs and Doctors in the Government Hospitals in Tamil Nadu and Pondicherry/4th

to 7th Respondents herein. The brief facts necessary for disposal of the Writ Petition are as follows:

(a) Petitioner is an agricultural worker. Her husband is suffering from spinal cord problem and the family of the Petitioner is depending on her income alone.

(b) Petitioner became pregnant for the second time and after full term, on 19.6.2010 her husband took the Petitioner to the Government

Headquarters Hospital at Kallakurichi and admitted her as an inpatient. The Hospital Authorities informed the Petitioner that operation time in the

hospital was only between 7 a.m. and 12 noon and as the Petitioner was already suffering from Labour pain, she was directed to approach the

Hospital at Salem or at Pondicherry.

(c) On the way to Pondicherry, due to severe pain, Petitioner's husband took her to the Government Medical College Hospital,

Mundiyambakkam, Villupuram, and according to the Petitioner, the authorities in the said Hospital, after consulting the Doctors, refused to admit

the Petitioner and directed her to approach JIPMER Hospital at Pondicherry.

(d) Thereafter, Petitioner's husband took the Petitioner to JIPMER Hospital at Pondicherry and admitted her at 12.00 mid night on

19.6.2010/20.6.2010. As the Petitioner was suffering from labour pain from 4.00 p.m. on 19.6.2010 onwards, the Doctors in the JIPMER

Hospital took a decision to conduct emergent caesarean at 3.00 a.m. on 20.6.2010, i.e., within three hours of her admission in the hospital and

directed the staff members in the hospital to shift the Petitioner to Ward No. 17 for initial preparation for conducting caesarean.

(e) The staff of the hospital, in a negligent manner shifted the Petitioner Ward No. 12, which is a normal ward. Doctors also failed to note the

mistake committed by the staff and failed to do caesarean at 3.00 a.m. on 20.6.2010. Petitioner's husband was not allowed to be in the maternity

ward as several patients expecting delivery were admitted.

(f) According to the Petitioner, the staff nurse noted discharge of blood and she was taken to the operation theatre at 9.30 a.m. on 20.6.2010 and

noted that her uterus was fully damaged and a male child was also found dead. Finally the Doctors removed Petitioner's uterus, according to the

Petitioner, without the consent of Petitioner's husband. Petitioner was immediately admitted in ICU ward and was given three units of blood and

four units of plasma. On 21.6.2010 the Doctors informed the Petitioner that a male child was born and died in Neonatal Intensive Care Unit

(NICU).

(g) Petitioner's husband questioned the Doctors regarding the delay in conducting caesarean as well as removal of uterus. Thereafter Petitioner

was treated in the Hospital for 11 days as inpatient and she was discharged on

1.7.2010 with an advise to come for check up regularly for three months.

(h) Petitioner having lost her male child, uterus and health and suffering from continuous abdominal pain, she is unable to do any work and living with her husband and a female child. As her husband is already suffering from spinal cord problem, there is no income to Petitioner's family and according to the Petitioner, due to the negligent act of Doctors and staff members of the 4th Respondent-Hospital, Petitioner is put to such a predicament for which the 4th Respondent is bound to pay compensation.

(i) Petitioner made Representations to the Respondents claiming damages and also to punish the staff concerned. The Third Respondent by his proceedings dated 27.7.2011 directed the Joint Director of Health Services, Villupuram to investigate on Petitioner's Complaint and file a Report within 15 days. In spite of the same, though enquiry was conducted, no Final Report was filed.

(j) On 19.9.2011, 4th Respondent gave a copy of the Report, wherein it is admitted that the Petitioner was admitted in 4th Respondent-Hospital on 19.6.2010 at 12.00 mid night and time was fixed to do caesarean at 3.00 a.m. on 20.6.2010 and as operation theatre was not available from 2.00 a.m. to 9.00 a.m. due to four other emergent operations which were carried out till 9.30 a.m., Petitioner was kept in a ward for observation.

It is further stated therein that Laparotomy was done and scar was found to have fully ruptured and an Asphyxiated male fetus was delivered and was transferred to Neonatal Intensive Care Unit, where subsequently the baby died, and the mother had massive blood loss because of the ruptured uterus and her uterus had to be removed to save her life. She was kept in the hospital for 11 days and discharged on 1.7.2010 with an advise to attend hospital for follow up after six weeks.

(k) As no compensation was paid Petitioner submitted Representation before the Human Rights Commission, Pondicherry, which ordered enquiry and no finality is reached. Hence, Petitioner has filed this Writ Petition with the above said prayer.

2. The 4th Respondent, where the Petitioner was lastly admitted, i.e., on 19.6.2010 at 12.00 midnight filed Counter Affidavit wherein it is stated as follows:

(i) Respondents 2, 3 & 5 to 7 are solely responsible to pay compensation to the Petitioner as the Doctors in the hospitals in Tamil Nadu cannot

refuse to treat the patients and therefore the 4th Respondent cannot be held liable for paying compensation.

(ii) The 4th Respondent admitted the Petitioner in the hospital on emergency basis, even though there was no records regarding previous health

condition/follow up status of the Petitioner. Petitioner, aged 32 years, was admitted on 20.6.2010 at 00.39 hours as a case of second gravida with

post caesarean pregnancy at 39+4 weeks of gestation with history of watery discharge per vaginum and mild labour pains of six hours duration.

Previous caesarean section was done at the Government Hospital at Bangalore, one and a half year back.

(iii) It is further stated that on examination, her general condition was good with normal pulse, blood pressure and respiration. The abdominal

examination revealed a term uterus with a single live fetus with vertex presentation and uterine contractions. After examination, the Doctors noticed

leaking of amniotic fluid and caesarean was fixed at 3.00 a.m. on 20.6.2010 in view of premature rupture of membranes with unfavourable cervix

and post caesarean pregnancy,

(iv) There were four other caesarean sections, which were of more urgent nature than the Petitioner and operation theatre was not available till

9.00 a.m. on 20.6.2010. Only at 9.20 a.m. operation theatre become vacant and the Petitioner was taken to caesarean section. On opening the

abdomen, it was found that her previous uterine scar had given way completely and the baby was lying partly outside the uterine cavity and partly

in the broad ligament. Baby was extracted and found to be asphyxiated with APGAR score of 2 at 1 minute and 4 at 5 minutes and the Baby was

intubated and shifted to Neonatal Intensive Care Unit, where the baby expired on 22.6.2010.

(v) It is further stated in the Counter Affidavit that till availability of operation theatre, Petitioner was kept in Ward No. 17. As Petitioner's uterus

was beyond repair and blood loss was severe, hysterectomy was performed to save the Petitioner's life, after getting verbal consent from the

relatives, who were standing outside the operation theatre. Bilateral internal iliac artery ligation was done to control bleeding from the vault and

broad ligament. Three packs of red blood cells and four packs of plasma were transfused during operation. Then the Petitioner was transferred to

Intensive Care Unit (ICU), where she was transfused one more pack of blood cells and three more packs of plasma. Broad spectrum antibiotics

were given to prevent infection and at 6.00 p.m. on 21.6.2010, Petitioner was shifted to obstetric post operative ward and she was discharged on

1.7.2010 after sutures were removed.

(vi) It is further stated in the Counter Affidavit that four operations were conducted from 3.00 a.m. to 9.00 a.m. on 20.6.2010, while the Petitioner

was waiting for her turn. Thus, there was no negligence on the part of the Doctors at any time, who treated and operated the Petitioner.

3. Mr. N. Subramani, learned Counsel appearing for the Petitioner submitted that the 4th Respondent-Hospital is a Central Government Hospital,

which is a reputed hospital in the area. The Doctors having found that the Petitioner has to undergo caesarean at 3.00 a.m. on 20.6.2010, want of

operation theatre or table cannot be a ground to postpone caesarean and only due to the said postponement of caesarean from 3.00 a.m. to 9.00

a.m. the male child of the Petitioner died due to asphyxia, which also resulted in huge blood loss and ultimately removal of Petitioner's uterus. The

learned Counsel further submitted that the Petitioner had to undergo treatment as an inpatient till 1.7.2010 and underwent unbearable pain, for

which 4th Respondent is bound to pay compensation to the Petitioner, as she lost her male child and also her uterus, due to which she cannot

conceive any more to give birth to a child. The learned Counsel also submitted that right to health of the child was totally affected and right to get

timely treatment was denied to the Petitioner, due to which she lost her uterus, apart from loss of full grown male child. Hence, the Petitioner is

entitled to get adequate compensation from the 4th Respondent.

4. Mr. T. Arunan, learned Counsel appearing for 4th Respondent/ JIPMER Hospital, Pondicherry submitted that 4th Respondent is a well reputed

big hospital, obtained autonomous status in August, 2008 and every day about 5000 to 6000 outpatients are coming for treatment to the hospital

and in the Department of Obstetrics and Gynaecology alone about 250 to 300 outpatients are coming for treatment every day. About 40 to 50

patients are admitted for delivery in the labour ward, which include complicated

cases, referred from other hospitals. About 5 to 8 caesarean operations are taking place every day and only two operation theatres and two labour wards are available to take care of the patients. An emergency operation theatre is also kept open. There are 14 regular Specialist Doctors in the Department of Obstetric and Gynaecology for giving treatment to such kind of patients everyday. Petitioner was examined by the Doctors and time was fixed as 3.00 a.m. on 20.6.2010 to perform caesarean. However, due to non-availability of place in the operation theatre, she could be operated only after 9.00 a.m. and there was no negligence on the part of 4th Respondent and its staff and Doctors. The baby was kept under intensive care and in spite of that the baby expired.

The mother/Petitioner was given 11 days further treatment and she was discharged on 1.7.2010 and thereby no negligence can be attributed. The 4th Respondent-Hospital having given best treatment as per its ability, no compensation is payable by the 4th Respondent to the Petitioner.

5. Heard the learned Central Government Standing Counsel appearing for the First Respondent as well as the learned Additional Government Pleader appearing for Respondents 2, 3 & 5 to 7.

6. The point for consideration in this Writ Petition is as to whether the Petitioner was put to suffering and she lost her male child and uterus due to non-extending of timely treatment in the 4th Respondent-Hospital.

7. It is not disputed that the Petitioner was admitted in the 4th Respondent-Hospital on 19.6.2010 at 11.55 p.m. and the same is evident from the Maternity Admission Sheet, copy of which is filed by the 4th Respondent in the typed set of papers. In the said Admission Sheet it is further

mentioned that the Petitioner was having labour pain since 6.00 p.m. on 19.6.2010 and the Doctors examined the patient/Petitioner at 00.39 hours

on 20.6.2010. The same is also evident from the Admission Record maintained by the 4th Respondent-Hospital. Petitioner's husband gave a consent on the same day for diagnostic examination, biopsy, transfusion and operation and for administration of anesthesia as may be deemed

advisable in the course of treatment and the said Consent Letter signed by the Petitioner's husband is also filed at page No. 4 of the typed set of papers filed by the 4th Respondent.

8. In the Counter Affidavit filed by the 4th Respondent in paragraph 9 it is stated

that leaking of amniotic fluid was confirmed during examination of the Petitioner and a decision was taken for conducting caesarean at 3,00 a.m. on 20.6.2010 in view of premature rupture of membranes with unfavourable cervix and post caesarean pregnancy. However, caesarean could be conducted only at 9.20 a.m. on 20.6.2010. The reason stated for the delay in conducting caesarean was non-availability of operation theatre till 9.00 a.m. It is further stated in the Counter Affidavit that at the time of opening the abdomen it was found that her previous uterine scar had given way completely and the baby was lying partly outside the uterine cavity and partly in the broad ligament. Baby was extracted and found to be asphyxiated with APGAR score of 2 at 1 minute and 4 at 5 minutes. Baby was intubated and shifted to Neonatal Intensive Care Unit, where the baby expired.

9. Thus, it is an admitted position that even though caesarean time was fixed at 3.00 a.m. on 20.6.2010, actually caesarean was conducted only at 9.20 a.m. on 20.6.2010, which according to the 4th Respondent was due to non-availability of operation theatre. The staff of the hospital and Doctors in the hospital cannot be blamed personally for not conducting caesarean to the Petitioner at 3.00 a.m. on 20.6.2010 as it is pleaded in the Counter Affidavit that the Petitioner was shifted to Ward No. 12, which is a normal ward, where pregnant patients, post operative patients were kept for treatment. Petitioner's uterus was also beyond repair at the time of conducting caesarean, that was at 9.20 a.m. on 20.6.2010 and blood loss was severe.

Therefore the Doctors decided to perform hysterectomy to save the Petitioner's life and for doing such hysterectomy, consent from the Petitioner's husband, who was waiting outside the operation theatre was obtained as per the Counter Affidavit filed. Even otherwise, Petitioner's husband has given a consent to that effect in writing to do all kinds of treatment and a Consent Letter signed by Petitioner's husband is filed before this Court as stated supra. Petitioner was thereafter given treatment in the Intensive Care Unit and subsequently she was discharged on 1.7.2010, Thus, it is evident that due to non-availability of operation theatre/table, even though caesarean was to be performed at 3.00 a.m. on 20.6.2010, the Doctors could perform caesarean only at 9.20 a.m., which resulted in

asphyxia to the child in the womb and also damaged the uterus of the p
Petitioner.

10. In the report of the Medical Superintendent dated 15.9.2011 filed in the typed set of papers filed by the Petitioner at page No. 6, it is stated

that since operation theatre was not available from 2.00 a.m. to 9.00 a.m., Petitioner was kept in ward till 9.30 a.m. Thus, it is beyond doubt that

there is want of table in the operation theatre maintained by the 4th Respondent-Hospital, which is established and maintained by the Central

Government.

11. It is not the case of the 4th Respondent-Hospital that the child was not alive when Doctors examined the Petitioner at 00.39 hours on

20.6.2010. It is also not the case of the 4th Respondent that the child could have died before 3.00 a.m., that was prior to the time fixed for

conducting caesarean, as such death of the child was due to asphyxia, which in turn was due to the delay in conducting caesarean at 3.00 a.m. and

taking out the child from the uterus of the Petitioner only at 9.30 a.m.

12. Article 21 of the Constitution of India guarantees fundamental right to live to every citizen.

(a) The right of a citizen to preserve one's life and get medical treatment on time was considered by the Supreme Court in the decision reported in

Pt. Parmanand Katara Vs. Union of India (UOI) and Others, wherein in paragraph 8 it is held thus,--

8, Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions

has emphasised and reiterated with gradually increasing emphasis that position. A Doctor at the Government Hospital positioned to meet this State

obligation is, therefore, duty bound to extend medical assistance for preserving life. Every Doctor whether at a Government hospital or otherwise

has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the

discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of

procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give

way.

(b) In Chameli Singh and others etc. Vs. State of U.P. and another, the Hon''ble Supreme Court held thus--

8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is

assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this

object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.

These are basic human rights known to any civilised society. All Civil, political, social and cultural rights enshrined in the Universal Declaration of

Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.

(c) In Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, the Hon''ble Supreme Court held that the patient

cannot be denied emergency aid due to non-availability of bed in the Government Hospital and if any such denial is made, the same amounts to

denial of right to life guaranteed under Article 21 of the Constitution of India.

(d) The Division Bench of Orissa High Court in the case in OJC No. 8819 of 2000 order dated 17.9.2012, considered the medical negligence for

not giving timely treatment due to which a lady and child died. The Division Bench ordered Rs. 5 lakhs as compensation with 6% interest till date

of payment.

(e) The Calcutta High Court in the decision reported in Ranjit Kumar Das v. Medical Officer, ESI Hospital and others, 1997 (3) CPJ 336 (CDRC

West Bengal) held that even the failure of the hospital to treat the cardholder on the ground of absence of bed would amount to negligence and

therefore, adequate compensation must be provided.

13. From the above cited decisions it is beyond doubt that the action of the 4th Respondent in not conducting caesarean at 3.00 a.m. on

20.6.2010 due to want of table in the operation theatre is not a ground to deny compensation claimed by the Petitioner, particularly when it is

proved that the child was alive till the time fixed for operation, i.e., 12.00 midnight on 19.6.2010 and beyond 3.00 a.m. on 20.6.2010.

14. The 4th Respondent is also not justified in blaming the Respondents 2, 3, 5 to 7 for not extending treatment to the Petitioner in the hospital at

Kallakuruchi or in the Government Medical College Hospital, Villupuram, as the Petitioner's husband willingly taken the Petitioner to admit her in

the 4th Respondent-Hospital, which is as per the wish of the Petitioner as well as her husband. However, the action of the Doctors and staff in the

Government

Headquarters Hospital at Kallakuruchi and in the Government Medical College Hospital at Villupuram in not providing treatment to the Petitioner

is contrary to the Code of Medical Ethics drawn up with the approval of the Central Government u/s 33 of the Indian Medical Council Act, 1956,

which states that every Doctor, whether at the Government Hospital or otherwise, has professional obligation to extend his services to protect the

life. This obligation being total, absolute and paramount, laws or procedures, whether in statute or otherwise cannot be sustained and, therefore

must give way.

15. The Government is spending huge money for promotion of health. However in this case it is proved that adequate operation theatre/table is not

provided in the well reputed hospital i.e., JIPMER hospital, Pondicherry, which resulted in the death of a male child and caused physical and

mental agony to the Petitioner and her family. As right to health is recognised as a fundamental right, not providing adequate table to conduct

caesarean in the Government Hospital, either due to inadequacy of space or funds, cannot be a ground. Hence, the Petitioner is to be

compensated by the 4th Respondent.

16. The next issue to be considered is how much amount can be ordered to be paid by the 4th Respondent as compensation to the Petitioner, who

not only lost her child but also lost her uterus. Petitioner, having lost a fully grown child at the time of conducting caesarean belatedly and lost her

uterus permanently, is entitled to get adequate compensation,

17. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988;

Workmen's Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at just compensation. Considering the facts and

circumstances of the case, I am of the view that interest of justice would be met by directing the 4th Respondent to pay a sum of Rs. 2.00 lakhs for

the loss/death of child of the Petitioner due to the delay in conducting caesarean,

and Rs. 1.00 lakh for the loss of uterus due to the delay in performing caesarean and Rs. 25,000/- for pain and sufferings. The said compensation amounts totalling Rs. 3.25 lakhs is directed to be paid by the 4th Respondent to the Petitioner within a period of four weeks from the date of receipt of copy of this order.

The Writ Petition is ordered with the above directions. No costs. Connected M.P. No. 1 of 2012 is closed.