

(2011) 04 AHC CK 0300
In the Allahabad High Court
Case No : Writ C No. 24079 of 2011

Smt. Asha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 AHC CK 0300

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard learned Counsel for the Petitioner.
2. It is alleged that the Petitioner is a married lady with three children. She conceived even after the sterilization operation was performed on her, at the Community Health Centre, Naraini, Distt. Banda on 27.12.2007 and has given birth to a female child on 27.7.2010. She belongs to a marginal farmer's family and is unable to look after the welfare of the child, which was not planned by her. The Respondents are liable to compensate the Petitioner and her husband for the cost of brining up the unexpected child in the family for which the couple took precaution, to get her operated.
3. In State of Haryana and Ors. v. Smt. Santra AIR 2000 SC 1888 the Supreme Court laid down the principle, on which the compensation in such case can be awarded. It was held that the statutory liability to maintain the child does not operate as bar in claiming damages on account of tort of medical negligence and not carrying out sterilization operation with due care and responsibility. The statutory as well as personal liability of the parents to maintain their children arise on account of the principle that if a person has begotten a child, he is bound to maintain it. The claim of damages in tort on the contrary is based on the principle that if any person has committed civil wrong, the system must pay compensation by way of damages to the person wronged.

4. In the present case it is submitted that the Respondents have accepted their liability and were paid Rs. 30,000/-. The Petitioner has not stated the facts, as to who accepted the liability. He has also not disclosed as to which authority adjudicated or settled the liability in tort, under which ICICI Lombard General Insurance Company Ltd. has paid Rs. 30,000/- to the Petitioner.

5. In this case we find that the issues raised in the writ petition are basically issues of fact of the failure of the tubectomy operation and a claim of damages in tort for compensation. These issues will require adjudication of facts at the first instance, which can be made more effectively by the Court of competent jurisdiction, after taking evidence. The judgment in Smt. Santra (Supra) also arose out of a suit.

6. The writ petitions is dismissed on the ground of alternative remedy of filing a suit for claiming damages. If such suit is filed, the Court concerned will put it on fast track and decide it expeditiously.