
(2013) 05 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition No. 4022 of 2003

Smt. Savitri Bai	Vs	APPELLANT
State Govt. of Chhattisgarh and Another		RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 5 MPHT 75

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Advocate : C.R. Sahu and Mr. A.D. Kuldeep, for the Appellant; M.P.S. Bhatia, Dy. Govt. Advocate for the State, for the Respondent

Judgement

Satish K. Agnihotri, J.—Heard learned Counsel for the parties.

By this petition, the petitioner seeks a direction to the respondents to make payment of Rs. 2,00,000/-, as compensation for maintenance of her child, who was born on failure of family planning sterilisation operation undergone by the petitioner.

Learned Counsel appearing for the petitioner submits that on 27-6-1996, the petitioner had undergone family planning sterilisation operation, as is evident from Annexure P-1 at Primary Health Centre, Gujra, District Raipur. She already had a boy and girl child. Thereafter, on 25-3-1998, she gave birth to a female child.

2. According to the petitioner, before the family planning operation, she was already having one male and one female child. Learned Counsel further submits that since it was a case of negligent on the part of the concerned Doctors, the respondent-State is under an obligation to grant compensation to the petitioner and maintenance of the child, who was born after performing the family planning sterilisation operation.

3. On the other hand, learned Counsel appearing for the State submits that

neither the petitioner is entitled to compensation nor the State is under an obligation to grant maintenance to the child, who was born after family planning operation, was done.

4. The sterilisation operation was done on 27-6-1996. Thereafter, after a period of more than 20 months, a female child was born on 25-3-1998. The petitioner has failed to establish that on account of any negligence or dereliction of duty on the part of the Doctor, who performed sterilisation operation, a child was born subsequently.

5. The petitioner has filed the instant writ petition on 25-11-2003, without establishing the case that the subsequent birth of child was on account of any mishandling, negligence or delinquency on the part of the Surgeon, who had performed the operation. Thus, for want of sufficient materials and without proving the negligence on the part of the Surgeon, no relief can be granted. It has been held by the Supreme Court also that in sterilisation operation, there is no 100% certainty and for that the Doctor cannot be held liable.

6. It is also not pointed out by the petitioner that there is any condition or provisions under the law to fasten the liability in such cases on the Doctor or the State Government in case of failure of sterilisation operation.

7. The Supreme Court in *Martin F. D'Souza Vs. Mohd. Ishfaq*, observed as under:--

53. In *State of Haryana Vs. Raj Rani*, it was held that if a child is born to a woman even after she had undergone a sterilisation operation by a Surgeon, the doctor was not liable because there cannot be a 100% certainty that no child will be born after a sterilisation operation. The Court followed the earlier view of another three-Judge Bench in *State of Punjab Vs. Shiv Ram*. These decisions will be deemed to have overruled the two-Judge Bench decision in *State of Haryana Vs. Santra*, in which it was held that if a child is born after the sterilisation operation the Surgeon will be liable for negligence.

8. The identical issue came up for consideration before this Court in *Sonau Ram Suryawanshi and another Vs. State of Chhattisgarh and others*, 2010 (2) M.P.H.T. 41 (CG) : W.P. No. 1744 of 2003, decided on 19-8-2009, wherein, this Court held as under:--

The allegation with regard to the negligence of the doctor cannot be decided in writ jurisdiction as it requires proper investigation. The petitioner may approach the proper forum that may be available under provisions of law, if so advised, for the purpose of establishing negligence of the doctor.

In view of the above analysis and applying well-settled principles of law to the facts of the case on hand, there is no merit in this petition and as such, the same is dismissed. No order as to costs.