

(2013) 08 MP CK 0199
In the Madhya Pradesh High Court
Case No : First Appeal No. 214 of 2006

Smt. Sheela Devi alias Susheela Devi Jain	APPELLANT
Vs	
The Chief Secretary State of M.P. and others	RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2013) 08 MP CK 0199

Hon'ble Judges : S.K. Gangele, J;M.K. Mudgal, J

Bench : Division Bench

Advocate : D.D. Bansal, for the Appellant; Raghvendra Dixit Government Advocate for Respondents No. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mudgal, J.—The appellant/plaintiff has filed the appeal u/s 96 of the CPC being aggrieved by the judgment and decree dated 6.8.1998 passed by the Court of III Additional District Judge Shivpuri (Shri Harishchandra Sharma) in Civil Suit No. 4-A of 1997 dismissing the suit for compensation of Rs. 25,00,000/- filed by the plaintiff against the defendants no. 1 to 4 owing to negligence on their part in treatment leading to death of her mother. In this appeal, the appellant is referred as "plaintiff" and respondents no. 1 to 4 as "defendants". The admitted facts are that the mother of the plaintiff was brought on 10.6.1989 to the Shivpuri hospital in injured condition where she died and owing to her death, a notice was served by the plaintiffs upon defendants for compensation on 16.10.1989.

2. Facts, in brief, of the plaint are that appellant along with respondent no. 9 who is her sister and was a plaintiff in the suit, filed a suit against respondents no. 1 to 4 claiming compensation of Rs. 25,00,000/-. The deceased Shantibai, their mother who fell down in village Amolpatha on 10.6.1989 and having got injured was brought to the District Hospital Shivpuri where she was admitted at 9 AM. The doctor on duty at that time only prepared a treatment slip and left her

untreated and on being inquired by the plaintiffs about the name of duty doctor, he neither disclosed his name nor gave any information and adopted negligent attitude towards the treatment of their mother. On further request being made by the plaintiffs, the doctors and nurses of the hospital blatantly replied that if their mother was dying, let her die and they cannot help it. Ultimately, due to the negligence and irresponsible attitude of the doctors and nurses posted in the hospital, the mother of plaintiffs breathed her last at about 2 PM on the same day. The mother of plaintiffs was a healthy woman of 50 years of age and if the doctors and nurses posted in the hospital had performed their duties well, she would not have died. Hence, the plaintiffs jointly filed the civil suit claiming compensation of Rs. 25,00,000/- against the defendants for their responsibility in death of their mother.

3. Denying the allegations made in the plaint, the defendants have submitted that neither any negligence was committed in treating the mother of the plaintiffs nor any sort of misbehavior was done with the plaintiffs by the doctors and nurses posted in the hospital. The doctors had also not been asked to disclose their names by the plaintiffs. It was further submitted that in fact, mother of the plaintiffs fell down in the village and sustained severe injuries to her head. She was brought to the hospital in unconscious condition and the duty doctors without wasting any time, started her treatment. The doctor on duty at the relevant time Dr. R. Sharma himself treated the mother of the plaintiffs along with specialist doctors Govind Singh and H.P. Jain but in spite of all the efforts and treatment, mother of the plaintiffs could not be saved and ultimately she succumbed to the injuries suffered by her and there was no negligence on the part of doctors and nurses in her treatment. Hence, the plaintiffs are not entitled to any compensation due to death of their mother and therefore, the suit filed by the plaintiffs be dismissed.

4. The learned trial Court after framing the five issues, recording evidence of both the parties and having considered the recorded evidence, dismissed the suit filed by the plaintiffs vide impugned judgment dated 6.8.1998 holding that the plaintiffs have failed to prove that any negligence was committed by the doctors and nurses of the hospital.

5. The following questions arise for consideration in this appeal:

(a). Whether, Shanti Bai's death took place owing to negligence in her treatment by the doctors and the staffs of the hospital?

(b). Whether, defendants are liable to pay any compensation for the death of Shanti Bai?

(c). Whether, the findings of the trial Court are not based on proper reasonings?

6. Learned counsel for the appellant submits that the findings of the lower Court are not based on proper reasonings. The burden of proof was on the defendant no. 1 to 4 that no negligence on their part in the treatment of Smt. Shanti Bai

was committed by them but they utterly failed to discharge their onus in this case. Moreover, the bed head sheet of Shanti Bai's treatment was not produced on record and it was concealed deliberately to escape from the charge of their negligence. Learned counsel placing reliance on the judgments in Gindiya Bai Vs. Chairman, M.P. Electricity Board and Others, and State of Madhya Pradesh and Others Vs. Asharam, has submitted that the impugned judgment be set-side and the suit filed by the appellant be decreed.

7. Controverting the arguments made by the appellant, the learned Government Advocate submits that the evidence produced on behalf of the plaintiff being unreliable and unconvincing, was rightly discarded by the learned trial Court. The findings of the trial Court are not only based on proper reasons but also rational and meticulously contemplated. No interference is required in the impugned judgment and the appeal be dismissed.

8. Heard the arguments at length and perused the record.

9. At the outset, it is pertinent to mention here that filing of the suit was made by the daughters of the deceased only surprisingly whereas, the deceased was survived by her husband Sualal Jain and four sons defendants no. 5 to 8. Out of them, the defendant no. 8 Padam Chand Jain is by profession an Advocate who filed the suit as holder of Power of attorney on behalf of the plaintiffs.

10. In order to prove the case, three witnesses Sheela Devi daughter of the deceased (PW1) Kamal Kishore brother of the deceased (PW2), Suresh Kumar Mishra (PW3) and Padam Chand Jain (PW4) were examined. Chief examination of only Padam Chand Jain (PW4) was carried out. All the four witnesses deposing in their statements in support of the pleadings have stated that Shanti Bai was brought in the injured condition to the district Hospital, Shivpuri, where, she was admitted but was not given proper treatment by the doctors and the staff of the hospital owing to which, she succumbed to her injuries and died.

11. It appears from the record that after marriage, witness Sheela Devi (PW1) resides at Danaoli Lashker, Gwalior and Kamal Kishore (PW2) resides in the village Mangrauni Tehsil Karera. According to Sheela Devi (PW1)'s statement, her mother fell down from the cot and suffered injury but in para 7, she has vaguely stated that her mother went to bathroom for easing and she might have fallen down there. The witness has denied the fact that her mother fell down from the roof and further said that the house did not have cemented roof and that the roof was made of KHAPRAIL. On the contrary, the witness Padam Chand Jain (PW4) Advocate deceased Shanti Bai's son whose statement was partly recorded on 24.6.1996 has deposed that her mother fell down from the roof. The discrepancy in the statement of the witnesses clearly shows that the presence of Sheela Devi (PW1) at the site of accident is not only doubtful but also her statement is fabricated and she has deliberately cooked up the story of her mother's either falling in bathroom or from a cot to hide the actual severity of her head injury. Thus, the learned trial Court has rightly discarded the testimony

of Sheela Devi (PW1) assigning the reasons in para 16 to 21 of the impugned judgment.

12. Further, the statement of the brother of the deceased Kamal Kishore (PW2) is also not reliable as he does not belong to the village where the accident took place I.e. village Amolpatha, whereas, he is resident of village Mangrauni. Even this witness has also tried to hide the actual cause of incident stating that his sister fell down near the water tank while going to bathroom for easing. In para 4 of his statement, the witness has concealed the fact that Sheela Devi fell from the roof. Even the story of his very presence on the spot appears to be unconvincing. The learned trial Court has rightly discarded his testimony judiciously after appreciating in para 22 of it's judgment. It is surprising that neither the statement of husband of the deceased nor her sons defendants no. 5 to 8 were got recorded whose presence was quite natural at the site and time of incident.

13. The statements of all the witnesses Sheela Devi (PW1), Kamal Kishore (PW2) and Suresh Kumar Mishra (PW3) regarding the fact that the deceased was not properly taken care of in the hospital do not appear to be trustworthy as if there had been any negligence performed by the doctors and the staff of the hospital in the treatment of the deceased Shanti Bai why any report or complaint was not made to the higher authorities as well as to police station, particularly, in a situation the son of the deceased Padam Chand Jain (PW4) Advocate was present at the hospital when his mother died. Besides, the postmortem report of the deceased has not been produced showing negligence in the treatment. The notice dated 16.10.1989 Ex.P/3 was given by the plaintiffs after four months of Shanti Bai's death. The entire story seems to be a well planned afterthought just to seek compensation because, age of the deceased is mentioned as 50 years in para 6 of the plaint which is totally false as the age of her sons the defendant no. 5 and 6 have been shown as 43 and 40 years respectively. Moreover, it appears that Padam Chand Jain Advocate defendant no. 8 who was conducting the suit on behalf of the plaintiffs as Power of Attorney holder was playing his active role in filing the suit. He himself did not file the suit in his name only to avoid paying the court fee.

14. The judgments cited by the appellant referred earlier are not relevant to the instant case as the judgment rendered in State of M.P. and Others Vs. Asharam (Supra) was related to the unsuccessful family planning operation and similarly the other case in Gindiya Bai (Smt). Vs. Chairman, MPEB and others (Supra) was related to the death of a young boy caused by electriculation.

15. Rebutting the plaintiffs evidence on behalf of defendants, statement of the witnesses Dr. Govind Singh (DW1), Dr. H.P. Jain (DW2) and Dr. Suresh Chand Goyal (DW3) were got recorded. All the witnesses have categorically stated that the deceased Shanti Bai was properly attended to and properly treated with utmost care by the doctors and the staff and no negligence was committed on their part. As per doctors' statement, the condition of the patient was very

serious owing to head injury when she was brought to the hospital in an unconscious state. What treatment was given to her is mentioned in Ex. D/1. During the cross-examination, nothing has been brought on record so as to disbelieve them.

16. In *State of Punjab Vs. Shiv Ram and Others*, the Hon''ble Apex Court has held that the basis of liability of a professional in tort is negligence. Unless that negligence is established, the primary liability cannot be fastened on the medical practitioner. Unless the primary liability is established, vicarious liability on the State cannot be imposed.

17. Further in *Jacob Mathew Vs. State of Punjab and Another*, , this Court has held as under:

to hold in favour of existence of negligence associated with action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the Job and of errors committed by chance, which do not necessarily involve the element of culpability. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

18. Thus, the findings recorded by the trial Court accepting their statements are appropriate. Hence, considering the aforesaid facts and circumstances, no flaw has been found to interfere in the impugned judgment. Therefore, affirming the finding recorded by learned trial Court, the appeal is hereby dismissed. The costs of the appeal of the respondents no. 1 to 4 shall be borne by the appellant. The decree be drawn up accordingly.