

(2005) 04 KAR CK 0042

In the Karnataka High Court

Case No : Regular First Appeal No. 491 of 1997

Sou. Shevanta

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304 A

Citation : (2005) 3 ACC 770 : (2006) ACJ 2677 : (2005) ILR (Kar) 2867 :
(2005) 3 KCCR 1780 : (2005) 3 RCR(Criminal) 619

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Jayashree A. Murgod, for S.B. Hebballi, for the Appellant; Ravi B. Naik, for R.4 and M. Shivaprasad, Govt. Pleader for R1 and R2, for the Respondent

Judgement

Ajit J. Gunjal, J.—An unfortunate lady underwent an operation of laparoscopic which has resulted in serious malady is in appeal. Her suit for claiming damages for medical negligence has been dismissed by the trial court on the ground that she is unable to attribute the required degree of negligence to defendant-4, namely, the doctor who performed the operation.

2. Facts that are necessary to appreciate the controversy in question can be stated briefly as under:

3. During the course of the judgment the appellant would be referred to as the plaintiff and the respondents as the defendants.

4. The plaintiff was married in the year 1981. Her husband is a tailor by profession. She has two daughters and a son. After she delivered the last issue i.e., the daughter, she was advised to undergo laparoscopic sterilization by the medical officer incharge of the Primary Health Centre at Uchagaon. Since there was paucity of facilities for performing laparoscopic sterilisation operation in the Primary Health at Uchagaon, she was directed to go to Dr. Kodakini's Hospital at

Belgaum for undergoing the said operation. On 30.10.1985 the plaintiff was subjected to laparoscopic sterilization in the said hospital. The laparoscopic procedure was performed by defendant-4 who was working in the said hospital with the assistance of some other persons. The said operation was done under anesthesia and the plaintiff was unconscious for about 4-5 hours due to lack of proper care on the part of defendant-4 and the staff who assisted him in the said procedure. The said procedure was not done with the required due care and caution as is expected of a qualified doctor. The plaintiff was discharged from the said hospital on the same day of the operation i.e., 30th October 1985. But however a couple of days later she started experiencing severe stomach pain and she took immediate treatment from one Dr. Prakash Patil at Primary Health Centre at Uchagaon. In addition to the abdominal pain she started getting fever. Since the pain did not subside even after prolonged treatment she had no option but to approach the District Hospital at Belgaum for further check up and treatment. In the month of December 1985 the plaintiff was examined by one Dr. B.R. Desai in the Civil Hospital at Belgaum. As her pain could not be rectified by medical treatment, namely, by oral medicine, she was directed to undergo operation on 1st January 1986 which is the second of the operation after the sterilisation for removal of granule due to septic condition. The said operation was conducted by one Dr. M.K. Swamy and others of Civil Hospital Belgaum. The doctors at the civil hospital were of the opinion that this operation, namely, the second operation was necessitated due to the negligent act of the doctors during laparoscopic sterilisation operation conducted on 30th October 1985. The said granule was removed and sent to the J.N.M.C. Department of Pathology for further investigation. Dr. M.K. Swamy who conducted the said operation had reported to the resident Medical Officer that it was a case of complication due to the laparoscopic sterilisation and another operation was required to set right the said operation. He obtained necessary clearance from his superiors and the plaintiff was subjected to another operation (3rd operation) on 22.1.1986 as she had not been relieved of pain and fever after the operation conducted on 1.1.1986. After the third operation she was shifted to female surgical ward and was treated by one Dr. S.B. Annushetru (P.W.2) on 31.1.1986. On 2.2.1986 the plaintiff was subjected to another operation (4th operation) of colostomy by Dr. Wagarale and it was treated as a medico-legal case and it should be referred to the police and accordingly a report was sent at 11-55 P.M. on the same day. She was however discharged from the said hospital after prolonged treatment. Notwithstanding these operations, the agony of the plaintiff still continued. She started getting high fever, vomiting and there was infection of urinary track, and had to remain therein up to 13.5.1986 for further treatment. After discharge she was re-admitted on 4.7.1986 and on 10.7.1986 she was once again operated for vasico colic fistula and was discharged on 25.7.1986. This was the 5th operation. She was once again readmitted on 14.10.1986, with a couple of more complications and had to undergo another operation on 25.10.1986 at the hands of Dr. S.B. Annarshetru (PW.2) and others for closer of colostomy. In spite of series of these operations, the plaintiff was not cured and was not relieved of the

ailment and she has become virtually vegetable and permanently a sick lady. It is her case that the repeated operations were the result of careless, negligence attendance of defendant-4 during laparoscopic sterilisation operation on 30th October 1985. She would further say that she had to spend huge sums during her treatment in the civil hospital. Even though the treatment in the said hospital is expected to be free as it was owned by State, she was become invalid and has suffered permanent disability due to which she was deprived of family comfort and love. She was unable to enjoy the normal marital life and any kind of damages would not certainly restore her original health. In the circumstances, she laid a claim for Rs. 2,25,000/- by way of damages for the said bodily discomfort, pain and suffering and permanent disability which she has suffered. The said suit was instituted as an indigent person as she was unable to pay the required court fee.

5. Defendants 1 is the State of Karnataka, represented by the Deputy Commissioner, Belgaum, defendant No. 2 is the District Health Officer, Belgaum, defendant No. 3 is the Medical Officer, Primary Health Centre, Belgaum and defendant No. 4 is Dr. C.A. Dhakoji who performed the operation. Defendants 1 to 3 have seriously contested the said proceedings. They have generally denied all the allegations made in the plaint. They have denied that the plaintiff was advised to undergo laparoscopic sterilisation by the Medical Officer of Primary Health Centre, as stated. They would say that the plaintiff herself had volunteered for the said operation. According to them, there was no compulsion or advice given to her. They would further deny that the facility for performing laparoscopic sterilisation in the Primary Health Centre, Uchagaon lacked necessary facilities for performing such operation. But they would admit that Dr. Kodkini's Hospital at Uchagaon was a camp site as on 30.10.1985 for performance of the laparoscopic operation. They would admit that the said operation was performed by defendant-4. But however deny that he lacked necessary competence for performing the said operation. According to them, defendant-4 is a qualified doctor having sufficient experience in the branch of Gynaecology and Obstetric. They would say that he had completed his diploma in the said specialized branch and he was competent to perform the said operation. According to them, he had performed hundreds of such operations prior to 30.10.1985. In the circumstances, they would contend that the plaintiff was put in the hands of an expert doctor in this branch of medical profession. They would contend that a person who is undergoing laparoscopic sterilisation need not be administered or put under general anaesthesia. It is the normal practice that a patient is administered sedation and local anaesthesia is applied. Consequently they would deny that general anaesthesia was administered to the plaintiff. According to them the total duration of procedure of this kind would aridly last more than 15-20 minutes. Consequently, they would contend that keeping the patient in an unconscious state for a period of 4-5 hours does not arise at all. They have denied the said fact. According to them before the patient is operated necessary precautions would be taken. Such precautions were taken with

reference to the operation of the plaintiff. They have narrated in the written statement what are the necessary precautions which are required to be taken during such operation. The test dose of endure dose of local anaesthesia of 12 ml is administered. According to them this medicine is administered so as to prevent any possible infection which the patient is likely to get. Before administering the said medicine, the patient is examined to ascertain that the patient is fit for undergoing the said operation. In the case on hand, they would find that the plaintiff was fit to undergo such operation. According to them even though the said procedure is considered to be a minor procedure, still the examination is conducted so as to ensure the best possible safety of the patient and to avoid side effects and further complications and human failures on the part of the doctor who would be operating on the patient. They would further contend that after administration of the said local anaesthesia the period of ten minutes is observed to know the reaction of the said drug. If there is no reaction then a full dose of 12 ml is administered which is normally called a test dose. After the test dose, xylotomy was given to the plaintiff. She was observed for the test dose and after the test dose she was operated. According to them at the time of discharge the plaintiff was in perfect health and there was no cause of anxiety about post-operation affects. The sum and substance is that any complications which have arisen at a later point of time are not the fault of laparoscopic operation or that of the other defendants. In so far as granule is concerned, they would say that that has got no relation with the sterilisation procedure which she had undergone. They have generally denied all the plaint averments. They have further stated that colostomy operation which was conducted by Dr. Wagarali is not because of laparoscopic sterilisation. They further say that notwithstanding the fact that medico-legal case was registered and made out, it has nothing to do with the first operation which was conducted on 30.10.1985. Subsequent operations also have no relation to the first operation which was done on the said date. In the circumstances, they would deny that the plaintiff is not entitled for compensation at least as claimed by her in the plaint.

6. Defendant No. 4 has adopted the written statement filed by defendant No. 3 on behalf of defendants 1 and 2.

7. The learned trial Judge on the basis of the said pleadings has framed as many as seven issues which are as follows:

- 1) Whether the plaintiff proves that she was advised to undergo laparoscopic operation by the incharge medical officer PHS Uchagaon?
- 2) Does she prove that she was operated accordingly by defendant No. 4 on 30.10.1985?
- 3) Does she further prove that she may totally unconscious for about 4 to 5 hours due to the anaesthesia as alleged in para No. 2 of the plaint?
- 4) Does she further prove that due to the said laparoscopic operation she sustained severe pains in stomach and also got fever?

5) Does she further prove that due to the negligence of deft No. 4 and his staff she suffered the pain and fever and this necessitated her to undergo various operation as alleged in para 3 to 6 of plaint?

6) Does she prove that she is entitled for damages of Rs. 2,25,000/- as claimed by her in para No. 7 of the plaint?

7) What decree or order?

8. The plaintiff in support of her case has examined herself as PW. 1 and Dr. Annurshetru as PW.2. In support of her claim, she has produced as many as 11 documents, namely, Exs. P. 1 to P. 11 and Ex. P.6 (1) to P.32 which relate to notes, signatures and case sheets. The defendants examined defendant-4 as DW.1 and got marked two documents.

9. The learned trial Judge on consideration of the material on record was of the opinion that the plaintiff has failed to prove that the subsequent operations are the result of the first laparoscopic sterilization which was performed on her on 30th October 1985. The learned trial Judge was of the opinion that defendant-4 is a competent surgeon who is stated to have performed any number of operations of this type and was competent to perform such operation. He has further found that defendant-4 had taken reasonable precaution while performing the said operation and any subsequent development regarding colostomy and puss cannot be attributed to the laparoscopic operation. The learned trial Judge has ultimately found that the plaintiff has failed to prove beyond all reasonable doubt that the said operation was performed by defendant-4 in a gross negligent manner and consequently has dismissed the said suit.

10. Smt. Jayashree A. Murgod, learned counsel appearing for the appellant would strenuously contend that the learned trial Judge was not justified in dismissing the said suit. She further contends that the subsequent operations were the aftermath of the first operation which plaintiff had undergone on 30th October 1985. She further commends that the learned trial Judge has proceeded to examine the entire case as if he is considering the case one of criminal negligence and ultimately recorded a finding that the plaintiff has failed to prove the negligence beyond all reasonable doubt. This, according to her, is something alien to the suit which is filed for damages on the basis of tort. The finding recorded by the learned trial Judge on this issue is in respect of the degree of proof which is required in a criminal jurisprudence. According to her, the case ought to have been decided on the principle of preponderance of probabilities. She would refer to various portions of the oral evidence adduced on behalf of the plaintiff i.e., RWs 1 and 2 and also certain relevant documents marked as Ex.P6 series. She has also relied on a judgment of this court as well as the Apex Court to show that it is a clear case of medical negligence wherein defendant-4 had acted unbecoming of a competent doctor. She would further contend that since defendant-4 was a government servant or a government doctor, defendants 1 to 3 are also vicariously liable for the said act. She has relied on decision

reported in *Rajmal Vs. State of Rajasthan and Another*, . In the circumstances, she would submit that the appeal is to be accepted and the suit of the plaintiff be decreed.

11. Mr. Chandrashekhar, learned counsel appearing for defendant-4 would vehemently contend that the doctor was an extremely competent doctor who had performed innumerable operations of this nature and in the circumstances it cannot be said that he had acted in a grossly negligent manner. He would submit that he had taken all possible required care for performing the said laparoscopic operation. The necessary precaution of giving a test dose was also taken. The resultant subsequent operations are not the aftermath of the first operation which was performed on 30th October 1985. He would submit that it is the fault of the other doctors who performed operations at some later point of time to rectify certain other ailments which the plaintiff had contacted. He also referred me certain portion of the text book on Gynaenocology to show that the laparoscopic operation is a simple procedure which primarily does not require much of the expertise and is done in a routine manner more so in any camp. In the circumstances, he would commend that the learned trial Judge was justified in holding that the negligence cannot be attributed to defendant-4.

12. Sri Shivaprasad, the learned Govt. Pleader, would vehemently contend that the question of vicarious liability does not arise at all. He would submit that the trial court dismissed the suit of the plaintiff holding that the plaintiff has failed to prove beyond all reasonable doubt that defendant-4 has acted in a gross negligent manner. In the circumstances, he would submit that the learned trial Judge was justified in dismissing the said suit.

13. After giving my anxious consideration to the rival contentions, the primary question which is required to be looked into while dealing with the case of this nature which is particularly characterised as medical negligence. Medical negligence is defined as a lack of reasonable care and skill or willful negligence on the part of a doctor in respect of a patient, history, taking, examination, diagnosis, investigation, treatment medical or surgical etc., resulting in injury or damage to the patient. The term "damage" in the present context would mean physical, mental, functional injury of the patient. Halsbury's Laws of England, 3rd Edition, Vol.26, p. 17 would state as under:

"The law requires that the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. The law does not expect the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case."

In 1956(1) DLR 2 Schroeder J.A. in the case of *Crits v. Sylvester* has stated that:

"Every medical practitioner himself bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. He is bound to exercise that degree of care and skill which could reasonably to be expected of a normal, prudent practitioner of the same experience and standing, and if he

holds out as a specialist, a higher degree of skill is required of him than the one who does not profess to be so qualified by special training and ability."

The Apex Court in the case Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole and Another, Which has been followed in the latest case of Indian Medical Association Vs. V.P. Shantha and Others, it is observed as under:

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose, Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires. The doctor, no doubt, has a discretion in choosing treatment which he proposes to give to the patient, and such discretion is relatively ampler in cases of emergency."

14. Keeping these principles in mind, we will have to examine whether laparoscopic operation conducted by the 4th defendant would amount to medical negligence so as to warrant damages.

15. To appreciate the controversy in question, it is necessary to look to the evidence adduced by the plaintiff as well as the defendants. The plaintiff examined herself as PW. 1. In her evidence she would state that defendant-3 directed the plaintiff to approach Dr. Kodakini's Hospital at Shahapur for undergoing operation on 30.10.1985. The 4th defendant conducted the laparoscopic operation with the assistance of the others. She would state that the operation was performed by giving anesthesia. She would reiterate her stand that she remained unconscious for 4-5 hours. Due to the negligence of defendant-4, she has suffered and started getting pain in her abdomen and started getting fever. She would reiterate the fact that on 19.12.1985 she approaches the Civil Hospital Belgaum and one Dr. Desai was incharge of Gynaecology ward checked her. On examination Dr. Desai informed her that the abdominal pain she was getting cannot be cured by oral medicine, but she will have to undergo another operation. On 1.1.1986 she had to undergo an operation which was performed by one Dr. M.K. Swamy with the assistance of his staff doctors. While conducting the said operation certain granule was removed. Dr. Swamy was of the opinion that formation of granule was due to septic condition which had occurred due to mistake in conducting laparoscopic operation. Even after the said operation the fever did not subside. PW.2 Dr. Annusetru examined her after the second operation on 31.1.1986. She was shifted to female surgical department and the matter was referred to R.M.C. District Hospital Belgaum. She would reiterate that she visited the District

Hospital again due to puncture in the urinary track caused due to the earlier operation, namely, laparoscopic operation and urine and faecal matter started coming out. To close that colostomy another operation was performed by PW.2. The discharge cards are marked as Ex. P. 1 to P.4. The entire file relating to subsequent operation is marked as Ex.P.6 series. She has in no uncertain terms stated that because of the negligence and carelessness while performing the first operation i.e., the laparoscopic sterilization she had to undergo subsequent operations. The plaintiff was cross-examined by defendants 1 to 3 wherein she has completely denied the suggestions made that the subsequent operations were not due to the fault in performing the laparoscopic operation. Defendant-4 also cross-examined the plaintiff at great length wherein again she has denied that the subsequent operations were not due to the earlier laparoscopic operation.

16. The most important witness on behalf of the plaintiff is PW.2. PW.2, is Dr. S.B. Annushetru who at the relevant point of time was serving as Hon'rary Surgeon and Medical Officer in District Civil Hospital Belgaum and was an Assistance Professor in J.N.M.C. College Belgaum. His qualification is not denied by the defendants. He would reiterate what has been stated by P.W. 1 in her evidence. He has deposed that when the plaintiff was referred by gynaecologist to the Gynaecology Surgical Unit, he was on duty and maintained the notes after checking the patient. The notes starts on page sheet No. 19 of Ex. P.6 series and it is marked as Ex.P.6(1). On examination, he found the plaintiffs condition was serious and grave. In the circumstance, he sought for immediate transfer of the patient to the surgical unit and she was shifted to the surgical unit on 1.4.1986. The report of the RMO is to be found at sheet No. 21 and is marked as Ex. P.6(4). This case sheet would bear the signature of the RMO as well as the Gynaecologist. PW.2 has further stated that he did the operation which is called diverting transverse colostomy. The notes thereby are to be found at sheet No. 9 and the entire sheet is marked as Ex.P.6(6). This operation was done as the faecal matter was coming through the urethra and the patient was also discharging foe cal matter through the drain site of the operation performed earlier by the Gynaecologist. He also opined that the urinary passage was blocked. In the circumstances, the said operation of D.T. colostomy was performed. This operation was performed to prevent the faecal matter from going further into the urinary track, failing which the patient would have died of blockage of urinary track and subsequently urinary and renal failure. This operation was done as a temporary measure to immediately save the life of the plaintiff. The case sheet is found at Ex.P.6(8) and the urinary track infection, treatment notes are at page Nos. 43 onwards up to sheet No. 55. In para 6 of his evidence he would clearly implicate the 4th defendant that the first operation which was performed on the plaintiff was due to the complication occurred in the laparoscopic sterilization and the subsequent operations are the subsequent events occurred due to such laparoscopic sterilization. The RMO of the hospital was kept informed about the progress of the case. At more than one place PW.2

has clearly stated that the subsequent operations, namely, the five operations were performed after the laproscopic sterilization and T.O. mass was covered in the pelvic region due to infection which the plaintiff suffered when she underwent laparoscopic sterilization. It is no doubt true that PW.2 was also cross-examined by defendant-4. However nothing concrete was elicited in the cross-examination.

17. On behalf of the defendants, defendant No. 4 examined himself as DW. 1. In his evidence he would state that he has a clean record, in as much as, he has performed more than hundred such operations and the entire procedure for laparoscopic sterilization is done within 5 to 10 minutes. He would reiterate the fact that no general anesthesia was given to the plaintiff but local anesthesia was given and the duration could be for about half an hour. He has explained in his evidence in what manner the procedure is being done. Apparently in so far as T.O. mass is concerned, he would state that the said alleged T.O. mass can occur even in the absence of any operation and has denied that finding of T.O. mass is because of the laparoscopic operation. This is all the oral evidence adduced by the parties to the suit.

18. A careful perusal of the evidence adduced by the plaintiff and the defendants, it has to be stated that Notwithstanding the fact that 4th defendant was a competent doctor to perform the said laparoscopic operation, there is certain amount of degree of negligence on his part. The reason for recording such a finding is that admittedly the said operation was performed in a local camp wherein hundreds of patients would come for laparoscopic operations. In the circumstances, notwithstanding the 4th defendant being an expert in the field of performing laparoscopic operation, it cannot be denied that as on the date there were several patients who had come for such an operation. In the circumstances, there is a possibility of 4th defendant being negligent in performing the operation. The learned trial Judge has proceeded to non-suit the plaintiff on the ground that the plaintiff has failed to prove beyond all reasonable doubt that defendant-4 was negligent in performing the said laparoscopic operation. The learned trial Judge has clearly fallen in error in proceeding with the matter in such a fashion. Apparently the suit is filed for damages. It is not as if the learned trial Judge was considering the action of defendant-4 as contemplated under the criminal jurisprudence, namely, Section 304A of I.P.C. Before finding a man guilty and sentencing him to undergo imprisonment punishable u/s 304A of I.P.C. the evidence must be full proof. What is required while dealing with a suit of this nature is the preponderance of probabilities in the circumstances of the case, that is, whether defendant-4 has exercised a reasonable degree of care while performing the said operation. It is no doubt true, as has been stated, that the law does not expect the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case. It may be that the 4th defendant is professional expert in performing the said operation. But, such expertise does not absolve him from taking utmost care while performing a minor operation like laparoscopic operation, more so when the same is being conducted in a camp where hygiene

is lacking and no proper infrastructure is there to prevent infection. The 4th defendant ought to have been more circumspect in the case of this kind.

19. The learned trial Judge brushed aside the evidence of the plaintiff and P.Ws 1 and 2 without assigning any compelling or cogent reasons. It is to be found that the learned trial Judge has dwelled upon the fact that the plaintiff has approached the Primary Health Centre on her own accord and ultimately she cannot complain about the lack of medical care. In fact that is not the issue at all in the present case. What the learned trial Judge was expected to consider was whether the plaintiff has visited the camp for laparoscopic operation; certain preliminary examinations were done and defendant-4 had performed the operation and the subsequent five operations are in no way co-related with the first operation was the essence and the same ought to have been assessed in a proper perspective by the learned trial Judge. In fact the learned trial Judge has gone off at tangent and was of the opinion that no negligence can be attributed to defendant-4 while performing the said operation. The fact that a series of operations have taken place as many as five after the laparoscopic operation would be a clear indication that the 4th defendant though a competent doctor will have to be attributed with certain degree of negligence. In fact Mr. Chandrasekhar, learned counsel appearing for the 4th defendant was at great pains to show with the help of relevant text books as to how laparoscopic operations are conducted. Apparently while performing the said operation, as it is found an incision will have to be made and the said operation will have to be performed with a puncture of small wound. Be that as it may, the fact would remain that while performing the said operation infection and septicaemia has set in which is not an abnormal thing which would happen in a camp. The Apex Court has to deal with an identical situation in the case of A.S. Mittal and Another Vs. State of U.P. and Others, wherein a public eye camp was conducted and in the said eye camp as many as 122 patients were examined and 108 were operated and 88 of them for cataract with the modern advances in Ophthalmic Surgery, as in the present case, is considered a relatively minor and low risk surgery. But, however, the said operations were proved to be a disastrous medical misadventure for the patients. The operated eyes of the patients were irreversibly damaged, owing to a postoperative infection of the intra ocular cavities of the operated eyes. Apparently in those cases, as has been observed by the Apex Court that this terrible medical mishap was due to a common contaminating source. The circumstances are almost similar here, wherein as has been stated earlier it was a laparoscopic camp where any number of people would come for the said operation and for the lack of post operative care it is apparent that infection had set in. On re-appreciating the entire oral evidence as well as documentary which are referred to above during the course of the evidence, the conclusion is one of medical negligence having been proved.

20. The next question which would arise for consideration, in the circumstances, is what is the quantum of damages which the plaintiff is entitled to. Apparently the suit is filed for recovery of damages of Rs. 2,25,000/- from all the

defendants. Admittedly, defendant-4 is a Government servant working with defendants 1 to 3, taking into consideration the number of operations and the amount of pain and suffering the plaintiff had to undergo during this period and her condition still being not very stable, in the circumstances of the case, a compendious sum of Rs. two lakhs would be just and reasonable. In so far as the liability as to who is to satisfy the award is concerned, an identical situation fell for consideration before the Apex Court in the case of Achutrao Haribhau Khodwa and Others Vs. State of Maharashtra and Others, wherein the Apex Court has observed thus:

"Even if it is assumed that the second operation performed by PW.2 had led to peritonitis (as had been alleged on behalf of the respondents) the fact still remains that but for the leaving of the mop inside the peritoneal cavity, it would not have been necessary to have the second operation. Assuming even that the second operation was done negligently or that there was lack of adequate care after the operation which led to peritonitis, the fact remains that PW.2 was an employee of respondent I and the State must be held to be vicariously liable for the negligent acts of its employees working in the said hospital. The claim of the appellants cannot be defeated merely because it may not have been conclusively proved as to which of the doctors employed by the State in the hospital or other staff acted negligently which caused the death of the deceased. Once death by negligence in the hospital is established, as in the case here, the State would be liable to pay the damages.

Running a hospital is a welfare activity undertaken by the Government but it is not an exclusive function or activity of the Government so as to be classified as one which could be regarded as being in exercise of its sovereign power. In pursuit of the welfare ideal the Government may enter into many commercial and other activities which have no relation to the traditional concept of governmental activity in exercise of sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where the members of the general public can come for treatment, cannot also be regarded as being an activity having a sovereign character. This being so, the State would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees."

21. In view of the law laid down by the Apex Court, I am of the view that all the defendants are jointly and severally liable to satisfy the decree.

22. In view of what is stated above, the appeal is allowed in part. The plaintiff-appellant is entitled for Rs. 2,00,000/- (Rupees two lakhs) towards damages and compensation. The judgment and decree dated 22.6.1995 in O.S. No. 17/89 is set aside. The suit of the plaintiff is decreed as stated above with costs.