
(2014) 06 AP CK 0011
In the Andhra Pradesh High Court
Case No : A.S. No. 872 of 1995

State of Andhra Pradesh

APPELLANT

Vs

Ranganna

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 304A, 338

Citation : (2014) 4 ACC 942 : (2015) ACJ 840 : AIR 2014 AP 22 : (2014) 6 ALD 392 : (2014) 6 ALD(Cri) 392 : (2014) 6 ALT 225

Hon'ble Judges : M. Satyanarayana Murthy, J

Bench : Single Bench

Advocate : Vinod Kumar Deshpande, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M. Satyanarayana Murthy, J.—The 1st defendant in Original Suit No. 38 of 1991, on the file of District Judge at Adilabad (For short, "the trial Court"), preferred this Appeal against the impugned decree and judgment dated 14.11.1994, wherein the Suit filed for damages of Rs. 1,00,000/- with interest at the rate of 18% p.a. from the date of suit till the date of realization, was decreed.

2. The appellant herein was the 1st defendant and the respondents 1 to 3 herein were the plaintiffs and 4th respondent herein was 2nd defendant before the trial Court, in O.S. No. 38 of 1991. The appeal against the 4th respondent herein was dismissed for default vide Court order dated 17.12.2007. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the trial Court.

3. 1st plaintiff is the husband of deceased Sharada, 2nd and 3rd plaintiffs are their minor children. Sharada who was a resident of Adilabad was admitted in the Government Head Quarters Hospital, Adilabad for her delivery and on 18.01.1991 at 11.40 a.m. she delivered a male child i.e., 3rd plaintiff herein in the hospital and 2nd defendant who was duty doctor in the Hospital by then

attended the delivery of Sharada. At about 02.00 p.m., Sharada complained chest pain; despite several requests of the 1st plaintiff and his relatives, 2nd defendant did not attend the patient, ultimately she died at about 05.00 p.m. on the same day. The cause of death was certainly due to the negligence of Duty Medical Officer, Adilabad, as "adherent placenta with post partum hemorrhage with shock. Thus, Smt. Sharada died due to negligence and carelessness of 2nd defendant as he failed to take required care, while treating her as an ordinary prudent doctor, and failed to discharge his professional duties, despite repeated requests by the 1st plaintiff and his relatives. Thus, the death occurred only due to negligence or failure to discharge the professional duty of the 2nd defendant.

4. Deceased Sharada was aged 19 years by the time of her death, she would have lived for a considerable period and would have served the plaintiffs and on account of her untimely death, the plaintiffs were put to mental agony besides loss of services throughout the life of 1st plaintiff. Hence, claimed damages of Rs. 85,000/- for loss of domestic services, Rs. 20,000/- towards loss of consortium and Rs. 45,000/- towards mental pain and agony, in all Rs. 1,50,000/-, issued a notice to the defendants on 14.03.1991 demanding payment of Rs. 1,50,000/- towards damages for the medical negligence of 2nd defendant together with interest at the rate of 18% p.a. After service of notice on both the defendants, they failed to comply the legitimate demand of the plaintiffs. Hence, the suit.

5. 1st defendant remained ex parte. (2nd defendant filed written statement admitting the admission of Smt. Sharada in the hospital for pre and post delivery treatment of a child, but contended that she was treated with utmost care and caution by the duty doctors and her death was natural; she never complained chest pain and as such her relatives never requested the 2nd defendant to attend on Smt. Sharada. The death of Sharada was not due to carelessness of the doctors in the hospital and as such not liable to pay any compensation, finally prayed to dismiss the suit.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled for damages of Rs. 1,00,000/- from the defendants?

2. To what relief?

7. During course of trial, on behalf of the plaintiffs, P.Ws. 1 to 3 were examined and Exs. A-1 to A-5 were marked; on behalf of the 2nd defendant, D.W. 1 was examined and Exs. B-1 to B-3 were marked.

8. Upon hearing argument of both the counsel, perusing oral and documentary evidence available on record, the trial Court found that Smt. Sharada died only due to medical negligence of 2nd defendant, who is working under the 1st defendant, thereby held that the 1st defendant is vicariously liable for the acts of 2nd defendant and awarded damages of Rs. 1,00,000/-.

9. Aggrieved by the impugned decree and judgment of the trial Court, the 1st

defendant preferred this appeal on various grounds, mainly contending that:

- a) The trial Court relying on the evidence of P.W. 3, who is interested witness, concluded that the death occurred due to negligence of duty doctor, 2nd defendant herein, and apart from that the evidence of official witness, D.W. 1 is totally ignored though he is an independent witness, but the trial Court totally swayed away by the submissions of plaintiffs' counsel and passed the decree, which is contrary to law;
- b) The trial Court totally ignored the enquiry report marked as Ex. B-2 and the finding arrived by the trial Court, that cause of death was due to non expulsion of placenta at the time of delivery, is not based on any material and committed an error;
- c) The trial Court totally relying on the evidence of P.W. 3 ignoring the condition of patient regarding profuse bleeding etc., and non delivery of placenta within 15 to 30 minutes erroneously decreed the suit.

And finally prayed to allow the Appeal setting-aside the impugned decree and judgment of the trial Court.

10. During course of argument, learned Government Pleader mainly contended that Smt. Sharada died immediately after delivery of child and apart from that ignoring the evidence adduced by the defendants i.e., testimony of D.W. 1 and documents marked as Exs. B-1 to B-3 is a serious lacunae in the judgment; if those documents and medical evidence of D.W. 1 is accepted, the suit is liable to be dismissed and prayed to dismiss the Appeal setting-aside the impugned decree and judgment.

11. Learned counsel for the plaintiffs - respondents 1 to 3 herein argued totally in support of the findings recorded by the trial Court and prayed to dismiss the Appeal confirming the impugned decree and judgment of the trial Court.

12. Considering rival contentions, perusing the material available on record, including the impugned decree and judgment of the trial Court, the points that arise for consideration in this appeal are:

- 1) Whether death of Smt. Sharada was due to negligence of 2nd defendant, 4th respondent herein, in treating after delivery of a child?
- 2) Whether the plaintiffs are entitled to claim damages against defendants 1 and 2?

13. Point No. 1: Undisputedly Smt. Sharada, wife of 1st plaintiff and mother of 2nd and 3rd plaintiffs, was admitted in the Government Head Quarters Hospital for delivery of 3rd plaintiff and delivered him within minutes after her admission i.e., at 11.40 a.m. it is the specific contention of the plaintiffs that Smt. Sharada complained chest pain at about 02.00 p.m. and thereupon the 1st plaintiff and his relatives requested the 2nd defendant to attend the patient, Smt. Sharada as she was suffering from severe chest pain, but duty doctor did not attend on the

patient and she succumbed immediately. Thus, the death was only due to failure of the 2nd defendant in attending Smt. Sharada when she complained chest pain, but the said plea was denied by the defendants in clear terms contending that she never complained any chest pain; P.W. 1 and her relatives never requested the 2nd defendant to attend on Smt. Sharada.

14. Admittedly the 2nd defendant was the duty doctor attended on the patient Smt. Sharada at the time of her delivery in the labour room along with two female nurses and he mistreated the patient till her death, which is an undisputed fact. But now, the question is when Smt. Sharada delivered a child through normal delivery, the after affects of such delivery have to be taken care of by duty doctor or not? If he did not take maximum care and caution in treating the patient after delivery of child, certainly it amounts to negligence on his part as he failed to discharge his duties with utmost care as an ordinary prudent doctor.

15. Before deciding the alleged negligence of duty doctor, 2nd defendant herein, I feel that it is appropriate to refer the legal position with regard to what amounts to medical negligence.

16. In *Martin F. D'Souza Vs. Mohd. Ishfaq*, the Apex Court defined medical negligence, which is as follows:

"A medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation vide *Achutrao Haribhau Khodwa and Others Vs. State of Maharashtra and Others*, or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.

The professional is one who professes to have some special skill. A professional impliedly assures the person dealing with him (i) that he has the skill which he professes to possess, (ii) that skill shall be exercised with reasonable care and caution.

Judged by this standard, the professional may be held liable for negligence on the ground that he was not possessed of requisite skill which he professes to have. Thus, a doctor who has a qualification in Ayurvedic or Homeopathic medicine will be liable if he prescribes Allopathic treatment which causes some harm."

17. In *State of Haryana and Others Vs. Smt. Santra*, , the same question came up for consideration before the Apex Court, wherein it was held that when the respondent therein gave birth to a child, in spite of sterilization, and when she was under considerable monetary burden, unwarranted child born to her has

created additional burden for her on account of negligence of doctor, who performed sterilization operation upon her, such respondent is entitled to claim full damages from the State Government to enable her to bring up the child at least till she attains puberty.

18. In Jacob Mathew Vs. State of Punjab and Another, , Full Bench of the Apex arrived at the following conclusions while defining the word "negligence":

"(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. 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. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed

of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word "gross" has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304A of the IPC has to be read as qualified by the word "grossly".

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and - helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

19. In a recent judgment reported in Dr. P.B. Desai Vs. State of Maharashtra and Another, , the Apex Court defined the concept of "medical negligence", which is as follows:

"It could have been only if doctors would have faltered and acted in rash and gross negligent manner in performing necessary procedure. At the same time his act of omission, afterwards, in not doing surgery himself and remaining absent from scene and neglecting patient even thereafter when she was suffering consequences of fistula was an act of negligence and was definitely blameworthy. Therefore, omission was not of a kind which had given rise to criminal liability under given circumstances. When appellant decided to operate on patient against U.S. doctor's advice, level of attention expected towards patient was immense and undivided kind. Operating surgeon along with fellow junior doctors was absent and appellant's omission in not rendering complete and undivided legally owed duty to patient and not performing procedure himself had not made any

difference. It was not cause of patient's death which was undoubtedly because of acute chronic cancer condition. Negligent conduct in nature of omission of appellant was not so gross as to entail criminal liability on appellant u/s 338 of I.P.C. but it would amount to negligence on his part and also amount to actionable wrong in tort."

20. From a reading of principles laid down by the Apex Court, in the decisions cited supra, it is clear that absenting himself to complete the procedure or omission to do an act or commission which is not supposed to do while treating a patient amounts to negligence. Therefore, keeping in mind the principles laid down in the judgments cited supra, I must necessarily advert to the evidence on record to decide whether the 2nd defendant, who is working under the 1st defendant, was negligent in discharging his duties with due care and caution as an ordinary prudent doctor.

21. P.W. 1 is the husband of deceased Sharada who was present at the time of delivery and throughout treatment in the hospital along with his relatives. He testified about the delivery of Sharada in the Government Head Quarters Hospital, Adilabad and spoke about the time of delivery of a child, so also complaining chest pain by Sharada at 02.30 p.m. and immediately informing the same to duty nurses to inform the duty doctor but nurses went on saying that the doctor will come, but the doctors did not turn up till 04.00 p.m., at 04.00 p.m. Dr. Rajendra Prasad came, examined Sharada and directed them to prepare for transfusion of blood, thereupon one Bhaskar, friend of P.W. 1, donated blood for transfusion, when 2 or 3 drops were transfused she died. He further testified that the 2nd defendant attended on the delivery of his wife Sharada in the morning and after delivery he went out, came only after death of his wife. Thus, the 2nd defendant did not attend the patient with utmost care and caution, which resulted in death of Sharada. Ex. A-4 is the letter issued by Superintendent, District Head Quarters Hospital, Adilabad; Ex. A-5 is the death certificate which shows that Sharada died in the hospital while undergoing treatment.

22. In the cross-examination, he admitted that he does not know who was the duty medical officer when his wife was admitted in the hospital and other details of doctor who permitted to admit his wife in the hospital, but specifically asserted that the 2nd defendant was the doctor attended on Sharada and left her within 10 minutes after delivery. A suggestion was put to P.W. 1 that Sharada died due to non expulsion of placenta in natural course and when it was removed by manual labour, in that process she suffered profuse bleeding resulting in her death, was denied by P.W. 1. However, the consistent evidence of P.W. 1 shows that when Sharada complained chest pain, through duty nurses, the duty doctor was called but he did not turn up to attend on the patient Smt. Sharada. Even if the suggestion put to P.W. 1 is accepted, it is clear that placenta was not expelled in natural course after delivery of a child, when the doctor is aware about the said fact at best the doctor can wait for 15 to 30 minutes for delivery of placenta, when placenta was not expelled, it shall be removed manually,

otherwise it would have its own complications. Therefore, failure to take necessary care for removal of placenta after birth of child within 30 minutes which is a normal period of waiting for delivery of placenta would amounts to failure of duty doctor to take necessary care and caution as an ordinary prudent doctor. A doctor is supposed to know what are the consequences that flow from such negligence i.e., failure to remove placenta manually, despite it placenta was not removed manually which resulted in post delivery complications and Sharada died due to such complications.

23. P.W. 2 is the brother of P.W. 1, who was present at the time of delivery in the hospital and specifically stated that placenta was not expelled during delivery and he was present in the said room at the time of delivery, 2 nurses were also present by then. Since placenta was not expelled, he sent a word to the 2nd defendant through nurses to come and attend on the patient immediately, the 2nd defendant came and examined Sharada and went away without treating her, At about 01.30 p.m. Sharada complained chest pain, immediately she sent a word to the 2nd defendant but he did not turn up. Later, Dr. Rajendraprasad came and attended on the patient and advised for blood transfusion, but she died within short period and death was only due to failure of the duty doctor, 2nd defendant to remove the placenta after delivery. He was cross-examined but nothing was elicited, however a suggestion was put to P.W. 2 that when Dr. Rajendraprasad telephoned to 2nd defendant, 2nd defendant came and immediately attended on Sharada, got denial of it. Even if this piece of suggestion is taken as true, when 2nd defendant was the duty doctor failure to perform necessary procedure for removal of placenta waiting for 15 to 30 minutes after delivery, amounts to failure to discharge his legitimate duty or failure to take care required as an ordinary prudent doctor and such omission amounts to negligence.

24. P.W. 3 is the expert doctor whom the plaintiff was examined and according to his evidence when placenta was not expelled after 30 minutes after birth of a baby, placenta shall be expelled through uterus within 5 to 10 minutes, otherwise it shall be removed manually. Manual procedure for removal of placenta depends upon the condition of patient and bleeding after the birth of the baby within 15 or 30 minutes. In normal delivery cases, up to a maximum of 500 m.l. of blood lost can be considered within normal limits. When the B.P. of the patient is 70 to 80 MMHG, particularly, patient required urgent attention of the doctor, when the patient profusely bleeding with systolic blood pressure with B.P. 70-80 MMHG, patient initially leads in hypovalamic shock, which may lead to death. The consequences of adherent placenta are immediate and later consequences. Immediate consequences are bleeding, hypovalamic shock, death and infection may lead to death and later consequences of placenta may become adherent to become a polyp. The patient may complain chest pain.

25. In the cross-examination P.W. 3 admitted that he is a diploma holder in Gyneacology and running a nursing home at Nirmal but working in the hospital

and admitted there is no definite time frame for which method to follow, it depends on the patient's status. The opinion given by him is general in nature and applicable to a particular case. Thus, nothing was elicited in the cross-examination to disprove the opinion of P.W. 3, which referred as cause of death. Therefore, it is clear from the evidence on record and more particularly basing on the consistent defence of the defendants that the placenta was not expelled after normal delivery, when the duty doctor tries to remove placenta manually she died. But it is clear from the evidence on record, the duty doctor did not attend the patient despite requests made by P.W. 2 and others. When a woman gave birth to a child it is the duty of the doctor to take care whether the patient expelled placenta within 30 minutes after the delivery. If the woman did not deliver placenta within the reasonable time of 30 minutes anticipating after delivery complications due to non delivery of placenta, he should take necessary care to remove placenta manually, which is an ordinary procedure recommended by the doctors. Admittedly, she delivered a child at 11.40 a.m. and at best the waiting period would be up to 12.10 noon. However, the duty doctor, 2nd defendant herein, did not attend the patient and take any steps for removal of undelivered placenta after delivery of the baby though the normal time of 30 minutes time was over after delivery of a child, such omission directly amounts to carelessness and negligence on the part of duty doctor who supposed to know the consequences of such non-delivery of placenta even after 30 minutes. Therefore, failure to remove placenta by manual procedure after 30 minutes of delivery of a child directly amounts to negligence and as he failed to discharge his duties as an ordinary prudent doctor, such omission directly amounts to negligence, which can be called as "medical negligence".

26. To rebut the evidence of P.Ws. 1 to 3, Dr. Sambasiva Rao, was examined as D.W. 1, through whom Exs. B-1 to B-3 were marked. According to his evidence, he was only an Enquiry Officer in the enquiry Initiated against the 2nd defendant for the death of Smt. Sharada, along with Dr. Gopala Krishna to enquire into the cause of death of Sharada and even according to his evidence, he made clear admissions in his examination-in-chief and I feel that it is appropriate to extract the admissions hereunder for better appreciation, which are as follows:

"Myself and Dr. Gopalakrishna were appointed as Enquiry Officers to enquire into the death of Smt. Sharada. Our enquiry revealed that Smt. Sharada died because of retention of placenta leading to profuse bleeding and shock and death".

27. If this piece of evidence is taken into consideration, it is evident that the placenta was retained in the uterus after delivery of baby. According to the settled medical procedures, when placenta was retained even after 30 minutes after delivery of a child, the recognized procedure to be followed is to remove the placenta by manual procedure. When it is retained up to 04.00 p.m. though delivery took place at 11.40 a.m., certainly the patient would complain chest pain due to profuse bleeding which lead to death. Therefore, taking into consideration,

the cause of death spoken by D.W. 1, failure to remove placenta manually by 2nd defendant is a clear omission and it is against the recognized methods of removal of placenta by the medical sciences which lead to death. Such omission can be said to be medical negligence which caused death of Smt. Sharada.

28. D.W. 1 was cross-examined at length and in his evidence he admitted that after normal delivery, within 15 minutes after delivery, placenta has to be expelled, profuse bleeding is the result of retaining of placenta and loss of blood leads to low blood pressure.

29. The entries in case sheet show that 12.40 noon, retention of placenta was there and the patient was in shock, pulse is feeble, B.P. not recordable. These observations show that the condition of patient was serious and he further admitted that when placenta was not expelled within 20 minutes, it has to be removed manually, otherwise it will lead to death and they have 15 to 30 minutes after delivery and in the meantime placenta is not expelled they will take steps for removal by other methods.

30. From these admissions, it is clear that the duty staff attended on Smt. Sharada at 12.40 mentioned her condition in the case sheet. When the pulse is feeble, B.P. was not recordable, the degree of care required to be taken by the duty doctor is more than an ordinary patient; but the case sheet and other material did not disclose any special care taken by the duty doctors to restore the normal condition of Smt. Sharada. On the other hand, the duty doctor left the hospital at 11.00 a.m. as he was sick, after obtaining permission from the Superintendent of the Hospital but he did not verify the movement register on that particular day and admitted that call might have been sent at 01-00 p.m., but there is no record to show that the doctor attended the patient at 01.15 pm.

31. Though, D.W. 1 stated that the duty doctor was not negligent, his statement is only self serving. On the other hand, leaving the hospital after birth of a child, without obtaining permission in writing, and failure to attend the patient clearly amounts to negligence. Therefore, Exs. B-1 to B-3 i.e., case sheet, enquiry report etc., which contains several corrections would not help the defendants to deny the cause of death of Smt. Sharada. Therefore, the evidence of D.W. 1 would not come to the aid of 2nd defendant, on the other hand it supports the case of plaintiffs.

32. D.W. 1 was only an enquiry officer in the departmental enquiry ordered against the 2nd defendant. He is incompetent to speak about the precautions and care taken by the 2nd defendant while treating Smt. Sharada. Therefore, the evidence of D.W. 1 is of no use to rebut the evidence of P.Ws. 1 to 3. The 2nd defendant is the doctor who attended the patient throughout and filed written statement pleading that he has taken maximum care and caution while treating the patient. Thus, the care and caution taken by the 2nd defendant alone is competent to explain what amount of care and caution he took for removal of placenta. After delivery of baby to Sharada obviously for different reasons, he

stayed back and avoided the cross-examination by the adversary; thereby deprived the plaintiffs to elicit any favourable evidence by cross-examining the 2nd defendant. Therefore, non examination of the doctor who attended on Sharada i.e., 2nd defendant is fatal to the case of the defendants, more particularly, to prove that he had taken maximum care and caution, as an ordinary prudent doctor, depending upon the circumstances of the case. Hence, the defendants miserably failed to establish the alleged care and caution taken by the 2nd defendant as pleaded in the written statement.

33. On over all consideration of the entire evidence of D.W. 1 it is clear that the 2nd defendant did not take required care and caution for removal of placenta, within 30 minutes after birth of baby and that her condition was serious even at 12.40 noon, such callous approach on the part of duty doctor, leaving the hospital without applying any kind of leave and not attending the patient is nothing but exhibiting gross negligence in discharging his duties which resulted in death of Smt. Sharada, such omission to attend Sharada when her condition was serious directly amounts to medical negligence on the part of 2nd defendant who is working under the 1st defendant.

34. According to the defendants, necessary care and caution was taken by the hospital authorities, but death of Sharada was natural. This fact is disproved by the admissions of D.W. 1 himself. On the other hand, the death was only due to retention of placenta after birth of a child. Removal of placenta is the 3rd stage of labour i.e., last stage of child birth, usually it lasts anywhere from 5 to 20 minutes or more. Mild contractions that last about a minute each will help separate the placenta from the uterine wall and move it through the birth canal so that it can be pushed outside. Putting gentle pressure on uterus of patient may help the duty doctor for speeding up the process for delivery of placenta. Once placenta is delivered the work of the practitioner will stitch up any tears and patient will be free to enjoy with newly born baby. But, in the instant case on hand, placenta was retained due to excessive bleeding. However, the same is disclosed in the evidence of D.W. 1. However, the duty doctor left the hospital event without prior permission and without attending the patient Smt. Sharada, such omission directly attracts medical negligence as defined by the Apex Court in the decisions cited supra.

35. Hence, the trial Court rightly concluded that the cause of death of Sharada was only due to medical negligence i.e., failure to remove placenta manually waiting for 30 minutes after delivery of a child.

36. Though the trial Court did not record the finding specifically, the evidence available on record if read with reference to the legal position referred supra, the conduct of the 2nd defendant directly amounts to negligence. In view of foregoing discussion, I find that cause of death of Smt. Sharada was due to medical negligence on the part of 2nd defendant. Accordingly, the point is answered.

37. Point No. 2: The plaintiffs totally claimed damages of Rs. 1,50,000/- under various heads. There are no specific guidelines for assessment of damages in case of medical negligence, but the ordinary principles laid down in Motor Vehicles Act, 1988, can be adapted even to the cases of medical negligence, since the compensation or damages though termed differently, is one and the same. Here the trial Court awarded damages of Rs. 1,00,000/-. The loss sustained by the plaintiffs who suffered loss of company, guidance to the minors and loss of services to the family by the deceased Sharada during her life and also entitled to damages under the head of loss of consortium. If the principles for assessment of compensation in case of M.V. Act are applied to the instant case of medical negligence, certainly the damages as awarded by the trial Court is too low. In a recent judgment reported in Arun Kumar Agrawal and Another Vs. National Insurance Company and Others, , on account of death of a housewife, the Apex Court awarded an amount of Rs. 6,00,000/-.

38. In Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, , the Apex Court had an occasion to decide the question of amount of compensation and held that as the right to health of a citizen is a fundamental right, as guaranteed under Article 21 of the Constitution of India, Doctors, Hospitals, Nursing Homes and Poly-Clinics are liable to provide the same to the patients. It was further held therein that, it is the duty of the Tribunals, Commissions and the Courts to consider relevant facts and evidence in respect of facts and circumstances of each and every case to award just and reasonable compensation. Courts while adjudging compensation should also take into account factors like inflation of money as per cost of Inflation Index (C.I.I.), which is determined by the Union Finance Ministry every year to appreciate level of devaluation of money. There cannot be a strait jacket multiplier method in medical negligence claims and the Courts are expected to arrive at just, fair and reasonable compensation on the basis of income that was being earned by the deceased at the time of death and other related claims on account of death. While awarding just compensation, the order can be passed irrespective of the fact whether any plea in that behalf was raised by the claimant or not as the claimant, once held entitled, should receive sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

39. Therefore, by applying the principles laid down by the Apex Court in Dr. Balram Prasad (7 supra), the amount awarded towards damages for the untimely death of Smt. Sharada, due to medical negligence of 2nd defendant, is just and reasonable and the 2nd defendant, who is working under the 1st defendant, both are jointly and severally liable to pay damages by applying the principle of vicarious liability. Therefore, the trial Court rightly awarded the damages of Rs. 1,00,000/- which needs no interference by this Court, even after reappraisal of entire evidence. Hence, I find that the damages awarded by the trial Court are just and reasonable in view of the specific claim made by the plaintiffs. Accordingly, the point is answered in favour of the plaintiffs and against the defendants.

In the result, the Appeal Suit is dismissed confirming the impugned decree and judgment dated 14.11.1994, passed in Original Suit No. 38 of 1991 by the learned District Judge at Adilabad.

In consequence, Miscellaneous Petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.