
(2016) 03 GUJ CK 0094
In the Gujarat High Court
Case No : Second Appeal No. 93 of 2010

State of Gujarat and Others

APPELLANT

Vs

Rajni Dayaram Mali

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 03 GUJ CK 0094

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : Janak Raval, Asst. Government Pleader, for the Appellant; Sanjiv Dave, Advocate for Anuja S. Nanavati, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J.—1. Heard learned AGP Mr. Janak Raval for the appellant - State and learned advocate Mr. Sanjiv Dave for Ms. Anuja S. Nanavati for the respondent. Perused the record.

2. This Second Appeal is filed by original defendant of Regular Civil Suit No. 3 of 2008 (old No. Special Civil Suit No. 10 of 1987), which was filed by the respondent herein before the Civil Court, Surat claiming Rs. 1,93,908.50/- as compensation, for the injuries sustained by her because of negligence on the part of defendant No. 3 - Medical Officer, ESIC hospital, Surat while treating her. Parties are referred in their original capacity before the Civil Court.

3. As aforesaid, the plaintiff - who was aged about 18 years at the relevant time has claimed compensation because of improper treatment and medicine given by defendant No. 1 - Doctor, which resulted into hospitalization of the plaintiff for 4 days and operation for removal of pus from her leg since because of some improper treatment and medicine, her blood started to get converted into pus and because of such complication she had to take treatment for about 3 months and even after such treatment, her leg was damaged and became disabled resulting into a condition that plaintiff was unable to walk. It is specifically

pleaded and contended by the plaintiff that due to negligence on the part of defendant No. 1, plaintiff has suffered permanent disability so also pain, shock and mental agony at a young age and she had to leave her studies and lost her career. Though plaintiff has considered the quantum of compensation of Rs. 1,99,000/-, she has restricted her claim to Rs. 1,93,908.50/- after giving set off of certain amount paid by the defendant.

4. The trial Court has vide judgment and decree dated 24.01.2008 decreed the suit partly and awarded an amount of Rs. 40,000/- only together with interest at the rate of 9% on such amount to the plaintiff from the date of suit i.e. from 06.01.1987 till its realization, to be recovered from defendants jointly and severally. The perusal of such judgment by the trial Court makes it clear that the trial Court has taken care of all relevant facts and circumstances available on record, wherein there is admission that the father of the plaintiff has claimed reimbursement of Rs. 3267/- by producing bills and such amount was paid by the defendant in addition to payment of Rs. 1185/- and Rs. 2091/- on 24.12.1982 and 26.07.1984. Therefore, so far as relation and nexus of cause of action is concerned, such bill payment proves the same and no further discussion is required. So far as reasoning by the trial Court for confirming the negligence and awarding compensation is concerned, the judgment of the trial Court specifically confirms that plaintiff was cross examined by the advocate for the defendants and there was admission that a cut was put on the leg of the plaintiff by the doctor which had resulted into disablement as disclosed herein above, which had resulted into complications due to improper treatment. The trial Court has, however, further categorically observed that though plaintiff has adduced all relevant evidence to prove her case and that she was cross - examined by the learned AGP and that nothing can be proved by the defense, neither defendant No. 1 has stepped into witness box nor rebutted the fact of the plaintiff by producing any other oral or documentary evidence. It is also observed that defendant has not produced any evidence to show that complaint by the plaintiff was unwarranted and not correct and thereby there is no reason for the trial Court to deny that injuries sustained to the plaintiff is due to rash and negligent act on the part of the defendant No. 1 for which defendants are liable to compensate her. The trial Court has also relied upon the decision reported in , AIR 1969 SC 128, so also in III 1998 CPJ 1 (SC). The trial Court has further clarified that instead of applying proper dressing, defendant has put cut on leg of the plaintiff which resulted into complication because of formation of pus for which, plaintiff had to take treatment from different private hospital and she was operated.

4.1. So far as quantum is concerned, the trial Court has also discussed the relevant factor in detail and observed that the plaintiff being a young lady she has lost opportunity of marriage prospects and social life because of such disability and, therefore, lumpsum amount of Rs. 40,000/- for medicines, loss of future education, pain, loss of marriage prospects and social life, whereas for confirming the liability of defendants, the trial Court has relied upon exhibits 218

and 219 whereby some amount has been paid by the defendants to the plaintiff which is recorded herein above.

5. When such judgment and award was challenged before the First Appellate Court being District Court, Surat in Regular Civil Appeal No. 9 of 2009 by impugned judgment and order dated 11.11.2009, the Second Additional District Judge at Surat has dismissed the appeal after considering rival submissions. If we peruse the impugned judgment, it becomes clear that the first appellate Court has mainly relied upon the determination and conclusion so also reasonings by the trial Court in decreeing the suit while learned AGP before District Court also could not point out any illegality or possibility of different opinion while appreciating the evidence, more particularly exhibit 177 to 185, 188, 189, 193 to 196, 205 to 209 and 214. The appellate Court has also considered that defendant has not come forward either to adduce any evidence or to rebut any evidence produced by the plaintiff and, therefore, contended that there is no reason to disbelieve the case of plaintiff.

5.1. It is also to be considered that plaintiff has filed cross - objections in such Regular Civil Appeal, when trial Court has dealt with all the issues, the appellate Court has dismissed the appeal so also the cross - objections.

6. In light of above discussion so also facts and circumstance emerging from record, if we peruse the record of this Second Appeal while admitting the appeal following two questions were framed as substantial question of law for determination in this Second Appeal:

1. Whether the suit filed by the plaintiff was barred by limitation and whether the Courts below have committed any error in passing the decree in the suit of 1987 for the incident which has taken place somewhere in the year 1980?

2. Whether both the Courts below have committed any error in passing the judgment and decree without any cogent evidence with respect of the negligence and/or the permanent disability to the plaintiff?

7. If we consider both these questions, the fact remains that at least question No. 2 is very general and vague, in as much as, the judgment before the trial Court is well describing the negligence of the defendant whereas so far as permanent disablement is concerned, though there is no such terminology used in the judgment, there is discussion that leg of the plaintiff has been shortened and that she has suffered complications and, therefore, judgment awarding compensation for medical treatment, pain, shock and suffering etc. cannot be held to be illegal and that too at such stage of Second Appeal, more particularly, in absence of any cogent evidence before the trial Court by the defendant to prove that there is no such injury or disablement at all. It is also clear that when defendant has not stepped into witness box and thereby version of the plaintiff is to be believed, it is not necessary for the trial Court to reproduce entire evidence in the judgment. However, if we scrutinize R. & P., it becomes clear that plaintiff has produced several documentary evidence to prove her treatment so also bills

for medicines. If we peruse the deposition of father of the plaintiff he has categorically deposed on oath before the trial Court that plaintiff has been hospitalized for more than 3 months and that doctor has wrongly put a cut on leg of the plaintiff and even after prolonged operative treatment, she is unable to cross leg and she has become disabled and there is no possibility of recovering from such disability. If such evidence is not rebutted by defendant then there is no reason to interfere with the impugned judgment, at this stage. It is also evident from the record that plaintiff has sustained fracture for which she was operated and because of such fracture, she became permanently disabled. Therefore, I do not see any reason to interfere with the determination and conclusion by both the Courts below in favour of the plaintiff and against defendant - appellant herein when it is held that appellant No. 3 - defendant No. 1 was negligent in treating the plaintiff who has suffered from disablement.

8. So far as first question is concerned, suffice to note that though trial Court has framed relevant issues before deciding the suit when there is no issue regarding delay, the defendant has never bothered to approach the trial Court for framing proper issue regarding limitation. Moreover, it cannot be ignored that initially suit was preferred as indigent person in form pauper. Therefore period lapsed in allowing such application while considering limitation needs to be excluded so also the period lapsed during communication and approval of certain account by the respondent against claim by the plaintiff, since almost Rs. 7000/- was paid in installment to the plaintiff by the defendant. Therefore this issue of limitation is also unwarranted, at such belated stage. The appellant has failed to prove or even disclose on record that how the suit is barred by law of limitation. If time consumed in allowing the prayer for instituting suit as indigent person is excluded, then the suit is within limitation.

9. In view of above discussion, I do not find any substance in the Second Appeal. It cannot be ignored that there are concurrent findings against appellants - defendants and defendants have failed to rebut evidence of the plaintiff and prove their innocence before the trial Court and in absence of application for framing proper issue and to prove the delay by appropriate evidence, the appellant has practically missed the bus and, therefore, when amount awarded is practically a meager amount of Rs. 40,000/- to a young girl whose leg has been defirmed due to negligence of defendant No. 1, the appeal needs to be dismissed.

10. In view of above facts and circumstances, appeal stands dismissed. Interim relief shall stand vacated.