

(1995) 07 GUJ CK 0036
In the Gujarat High Court
Case No : First Appeal No. 1003 of 1988

State of Gujarat and Others		APPELLANT
	Vs	
Shahenazbanu Ashrafali		RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Citation : (1997) ACJ 176 : AIR 1996 Guj 136

Hon'ble Judges : S.K. Keshote, J;R.A. Mehta, J

Bench : Division Bench

Advocate : A.J. Desai, A.G.P, for the Appellant; P.B. Majmudar, for the Respondent

Final Decision : Allowed

Judgement

Mehta, J.—The trial Court has passed a decree for damages of Rs. one lac on the ground that the respondent-minor Shahnaz-banu was negligently administered tripple vaccine and the child suffered from poliomyelitis and permanent deformity and disability.

2. The plaintiffs case is that the defendant No. 3--Nurse Ranjanben had given a triple vaccine injection to minor Shehnaz-banu in vein instead of muscle on 3-7-1979 and due to it, she got the disease of polyomyelitis. It is the case of the plaintiff that instead of intra muscular, the Nurse had given intraveinous injection carelessly and thereby caused the aforesaid disease. At that time, the minor child was aged about one and half years. The injection was given on her right buttock. It is further stated by the plaintiff that next day she was taken to Dr. Agarwal who gave her treatment and medicine for two days. Because she did not get well, she was referred to Ahmedabad Civil Hospital. On 16-7-1979, she was taken to local Dr. K.C. Patel. He had also advised her to be taken to the Civil Hospital, Ahmedabad and Dr. Patel had told the plaintiff that as the injection was given in vein instead of muscle to the minor Shehnazbanu, she had got poliomyelitis in her right leg. On 21-7-1979, she was taken to Ahmedabad Civil Hospital where she was admitted as an indoor patient for seven days and she

was prescribed further treatment of electric shocks and physio therapy. Ultimately, there was no improvement in the right leg of the child. The certificate of Dr. K. C. Patel dated 20-7-1979 states that Shehnazbanu was admitted in his dispensary on 16-7-1979 and on examination, the child was found to have got poliomyelitis of right lower limb. The certificate further states that "the cause of the same appeared to be due to injections." While referring the case, Dholka Medical Officer referred to the disability of the lower limb and noted that the patient had taken three dose of DPT. It is also noted that after the third dose, the patient had developed paresis, The case papers of the Civil Hospital show that on admission, it was noted that there was polio of lower limb right side and the first dose of polio vaccine was given.

3. It is not in dispute that tripple vaccine injection was given to the child on 12-7-1979 and soon thereafter the child had developed the signs and symptoms of poliomyelitis and that even after the treatment in Ahmedabad Civil Hospital, the permanent disability and deformity has remained. Relying on these circumstances, the plaintiff has contended that it was due to the negligent and faulty way of administering injection through the vein that this poliomyelitis had resulted. Dr. Patel is examined at Ex. 52 and he has issued the certificate Ex. 54. He has stated that he was having the qualification of M.B.B.S. and had been practising from 1967. He has further stated that on 16-7-1979, the child was brought to his dispensary and there was paralytic effect on the right leg of the child and that he had issued the certificate. He has stated that on both buttocks, there is a sciatic nerve connected to the spinal cord and both are connected to the brain. He has further stated that DPT injection is to be injected in muscle and if the injection is not carefully administered in muscles of the buttock, the sciatic nerve would be affected and there would be paralytic effect and that is why he has issued the certificate that this appeared to be due to injection. He has stated that when he had examined the child, his entire leg was affected by paralysis. In the cross-examination, he has stated that the buttocks are largely muscular and sciatic nerve passes from below the muscles and it is lying 1.5" to 2" deep. He admitted that the failure is caused by viral infection and that the symptoms are not seen in the initial stage and this was known as "symptomless" symptomatic condition or silent infection. He has also stated that in the first three weeks, the virus enters the body and thereafter chances of recovery are few. He further stated in the cross-examination that he could not definitely say that in the present case, this had happened due to the administration of DPT injection.

4. Reliance has been placed on the Text Book of Paediatrics Section I bearing the heading "Poliomyelitis (Infantile Paralysis, Heyne Medin's Disease) by P.M. Udani. That also states that poliomyelitis is caused by polio viruses. The learned counsel has more particularly relied on the following two paragraphs at page 895 under the sub heading "Pathogenesis" which reads as under:--

"Local muscular trauma by intramuscular injections : This is one of the most important adverse factors in day-to-day practice in children as often there is a

history of muscular trauma by intramuscular injection in the affected limb. This is also termed provocative poliomyelitis.

DPT immunisation: A recent immunisation with the injection of diphtheria, pertussis and tetanus or any of the combinations within two to four weeks before the onset of poliomyelitis, leads to higher incidence of the paralytic episode and the muscles of the limb in which the DPT is injected are maximum affected."

5. This also shows that the onset of poliomyelitis has to be there and an injection or triple vaccine may in some cases bring out, trigger or provoke poliomyelitis. But that cannot be said to be the cause. The cause is -poliovirus and nothing else. But for the poliovirus, poliomyelitis cannot be caused. Moreover, no casual connection between the plaintiffs polio and the administration of the triple vaccine is established, much less any negligence.

6. From the evidence of this witness of the plaintiff, it is clear that this disease is caused by viral infection and this certificate regarding paralytic effect was based on an impression or belief that there was damage to a nerve of a lower limb and that there was paralysis of the lower limb and not poliomyelitis.

7. The plaintiff has also examined Dr. Mehta, Honorary Professor of Civil Hospital. He had examined and treated the child and he had brought the case papers Ex.66. However, apart from producing case papers, he has not stated anything in detail.

8. Defendant No. 3 Ranjanben is examined at Ex.70. She admitted that she had administered triple vaccine injection to the child and she denied that there was any negligence in giving that injection. She has stated that she had given it intra muscular and not intra veinous. A writing is produced at Ex.31. That writing is a type written page dated 18-7-1979 written within 7 days of administration of injection and before the child was taken to the Civil Hospital. Defendant No. 3 Ranjanben has denied to have given any such writing. This writing is not referred to or produced in the lower court at the earliest, and for the first time, it is produced after five years at the time of hearing of the suit. This typewritten writing within one week of the incident is quite unnatural. In any case, when there is no dispute about the administering of injection, this writing does not have much bearing.

9. At Ex, 76, Dr. Anjana Chinubhai Shah has been examined. She is M. D. Paediatrics and she is working in the Civil Hospital since 1972. She has stated that polio is caused by viral infection and that infection is through mouth and this disease is called poliomyelitis. She has further stated that on the entry of the virus in the body, after 2 to 3 weeks, a person would get fever or may not get fever and there may not be any symptoms and after 4 to 5 days of fever, some paralytic effect may be seen. She has further stated that DPT dose is ordinarily given at the age of the three months and thereafter every month, doses are given from three to five years and after one year, the first booster dose is given and after second year, second booster dose is given. She has stated that by

administration of injection in the muscles of buttock, it cannot cause poliomyelitis. In the cross examination, she denied that poliomyelitis can be caused by any injury to the spinal cord. She denied that poliomyelitis would be caused by any injury to sciatic nerve. She stated that if any injury is caused to sciatic nerve and there is paralysis, it is called "Injective Paralysis".

10. In view of the evidence of the plaintiffs witness Dr. K. C. Patel who has also admitted that poliomyelitis is caused by viral infection and also the defendant's witness Dr. Anjanaben to the same effect, it is clear that poliomyelitis is caused by viral infection and it cannot be caused by anything else than viral infection. The polio virus enters through mouth and spreads through intestines and therefore, it is wholly incorrect to say that the child suffered poliomyelitis because of any faulty injection administered in the buttock of the child.

11. The learned counsel for the appellant also drew our attention to the Mosbi's Medical Dictionary wherein it is shown that "poliomyelitis" is an infectious disease caused by one of the three polio viruses and it is transmitted from person to person through fecal contamination or oropharyngeal secretions. Poliovirus is a causative organism of poliomyelitis.

12. A text book named "Harrison's Principles of Internal Medicine" discusses as under :--

"The following sequence of events has been postulated as the basis for infection: (1) The virus enters the body by way of the mouth, begins to multiply in the oropharynx and lower part of the intestinal tract, and can be transmitted from either area. The site of viral growth is probably extraneural. Virus is present in pharyngeal secretions and stool during the incubation period, it has been demonstrated in the feces as long as 19 days prior to onset of the disease (2) The phase of "minor illness" (described below) develops in association with the presence of the virus in the blood, throat, and feces; the viraemia persists for only a few days until antibodies make their appearance. The virus in the intestinal tract penetrates the lymphatic channels and enters the bloodstream, from which it is disseminated. (3) The final stage in the pathogenesis of poliomyelitis is invasion of the nervous system. It has been suggested that the virus enters the nervous system from the blood in the area postrema of the medulla oblongata because this is more permeable than other parts of the brain to dyes injected intravascularly; it has also been postulated, however, that viral invasion of the nervous system occurs at many points by direct passage of virus from capillaries to neurones. Once the virus has reached the nervous system, it spreads along nerve fibers."

Paralytic poliomyelitis is also discussed by stating that the syndrome of paralytic poliomyelitis consists of prodromal manifestations (minor illness), signs of meningeal irritation, abnormal spinal fluid, and signs of involvement of motor nerve cells in the spinal cord, brain or cranial nerve muscle resulting in paresis of paralysis of various muscles This is due to polio virus and not due to any

neurological problem.

13. In the present case, it is undisputed that the child had suffered from poliomyelitis and resultant disability and deformity of the right leg. However, it cannot be said that this poliomyelitis is caused by the triple vaccine injection administered by the Nurse. Such injection cannot cause the disease of poliomyelitis. There is clear evidence and medical science showing that poliomyelitis is caused by polio virus which is communicated through mouth and intestines and it cannot be caused by any triple vaccine. Merely because on the administration of triple vaccine on 12-7-1979, it developed into poliomyelitis, it cannot be said that it is developed by such administration of the triple vaccine and, therefore, it cannot be said that due to administration of the triple vaccine, poliomyelitis was caused. There is no injury caused by triple vaccine injection and it has not caused poliomyelitis.

14. The learned trial Judge has observed that:

"Dr. Anjanaben Chunibhai Shah is examined at Exh. 76 who has admitted in her cross examination that sciatic vein is under the buttock of human body and it has connection with spine and the spine has got connection with mental vein and if such sciatic vein gets injury then there is possibility of poliomyelitis."

15. This is clearly misreading of the evidence of Dr. Anjanaben Shah. The relevant part is in Gujarati which reads as follows:--

Matter in vernacular--Omitted(Ed.)

16. It is clear from the above that the virus must have entered the body for causing poliomyelitis and she has clearly stated that because of this kind of injection, poliomyelitis is not caused.

17. This disease of poliomyelitis by virus cannot be caused or result from the triple vaccine injection howsoever the doctor may be negligent. In the present case, there is no evidence whatsoever to show that there is any negligence in administration of the injection. The allegation is that the child later on developed poliomyelitis. There is no medical evidence stating that there was any neurological damage nor is it possible that the viral infection is caused by administration of such injection. ,

18. In the result, the findings of resultant damage are erroneous and contrary to the evidence and medical evidence. Hence, this appeal is required to be allowed and the judgment and decree is required to be quashed and set aside.

During the pendency of this appeal, there was stay of execution of the money decree and only a sum of Rs. 5000/- and half of accruing interest was permitted to be withdrawn and later on a sum of Rs. (sic) was permitted to be withdrawn for enabling the plaintiff child to undergo an operation. In facts and circumstances of the case, we direct that though the suit is dismissed and the trial Court's decree is reversed, there shall not be any restitution or recovery.

The amount lying in deposit and invested be returned to the appellant State Government.

19. In the result, the appeal is allowed and the judgment and decree of the trial Court are quashed and set aside and the suit is dismissed. No order as to costs.