
(1997) 01 GUJ CK 0042
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Bhanudanji Mehsandanji Gadhvi

RESPONDENT

Date of Decision : 18-01-1997

Acts Referred:

Citation : (1997) 1 ACC 453

Hon'ble Judges : M.H. Kadri, J

Bench : Single Bench

Judgement

M.H. Kadri, J.—First Appeal No. 1322 of 1986 is filed by State of Gujarat and Medical Officer, Referral Hospital, Idar whereas First Appeal No. 1003 of 1987 is filed by Sabarkantha Jilla Panchayat, Himatnagar, challenging the judgment and decree dated 3.5.1986, passed by the learned Civil Judge (SD), Himatnagar in Special Civil Suit No. 52 of 1981, whereby the learned Civil Judge (SD), allowed the suit filed by Respondent Bhanudanji Mehsandanji Gadhvi claiming compensation of Rs. 25,000/- with costs and simple interest(r) 6% per annum from the date of the suit till realisation, to be recovered equally from the appellants of the two appeals.

2. Respondent of FA No. 1322 of 1986 - original plaintiff (hereinafter to be referred as "respondent") was resident of Village Therasana, Taluka Bhiloda, Dist. Sabarkantha and was married with Renuben who was aged about 28 years. Out of that wedlock, three male children were born. Eldest son Bharat aged 7 years is suffering from paralysis and the second son Janak is aged 3 years while the third son Narendra who was newly born died in April, 1981 at the age of 6 months. After delivery of third son, respondent and Renuben (since deceased) decided to undergo tubectomy operation on 20.11.1980. Therefore, Renuben was admitted in Referral Hospital, Idar and the operation was performed. According to the respondent, before operation, Renuben was hale and hearty, and was keeping good health. It is alleged that after the operation, Renuben complained of severe and unbearable pain and, therefore, the Medical Officer in the Referral Hospital started treatment for pain in the abdominal region, and

prescribed medicines, which were purchased by the respondent from medical store at Idar. In spite of treatment, Renuben did not recover and her health deteriorated, and, therefore, she was referred to Civil Hospital at Himatnagar on 26.11.1980. In the Civil Hospital, Himatnagar also Renuben complained of severe and unbearable pain. Doctors at the Civil Hospital, Himatnagar also prescribed medicines and the respondent purchased the same from medical stores at Himatnagar. As there was no improvement in the condition of Renuben, the doctors in the Civil Hospital, Himamagar advised to take her to Civil Hospital at Ahmedabad, and accordingly she was shifted to Civil Hospital, Ahmedabad on 1.12.1980 by means of an ambulance van. In Civil Hospital, Ahmedabad, the doctors diagnosed the disease of Renuben as distension of abdomen and severe jaundice", and prescribed medicines which were purchased by the respondent from medical stores at Ahmedabad. On 3.12.1980, Renuben was referred to Nephrologist in the Civil Hospital, who advised dialysis because of some infection to kidney. In spite of the treatment given to Renuben in the Civil Hospital, Ahmedabad, she did not recover and her condition deteriorated day-by-day, and, therefore, the doctors in the kidney department refused to perform dialysis on her. It is alleged by the respondent that the doctors attending on Renuben informed the respondent that he may take away his wife wherever he wanted to take her. As the respondent lost all hopes, he took Renuben to his native village by means of an ambulance van on 3.12.1980. At the village also, general condition of Renuben deteriorated day-by-day and, therefore, the respondent went to the Referral Hospital to call doctor. It is alleged that the doctor at the Referral Hospital refused to examine Renuben. Thereafter the respondent tried to call a private doctor, viz. Dr. Shukla. Dr. Shukla examined Renuben and gave his opinion that the tubectomy operation was not performed with sufficient and complete care, and, therefore, other complications had arisen. Ultimately, Renuben died on 7.12.1980. The respondent thereafter made applications to the District Panchayat and to the Health Department of the Government of Gujarat claiming compensation for the death of his wife Renuben, due to negligence of the doctor while performing tubectomy operation. He also prayed that he may be reimbursed medical charges and other sundry expenses. It is alleged that because of untimely death of his wife, the respondent had suffered mental shock. It is also alleged by the respondent that because his wife Renuben died, his youngest son who was aged about 6 months also expired as there was nobody to look after him. In the suit, it was averred that Renuben was helping the respondent in the agricultural operations as well as cattle breeding and dairy business and because of losing his wife, the respondent suffered economically. In the suit, the respondent claimed compensation and damages of Rs. 30,000/-; and deducting the amount of Rs. 5,000/- which was paid as ex-gratia by the District Panchayat, he claimed a decree for Rs. 25,000/- with costs and interest to be recovered from the defendants in the suit.

3. At the initial stage, the defendants did not file written statement, and, therefore, by order dated 25.1.1982, the learned Civil Judge (SD), ordered the

suit to proceed ex-parte against the defendants. It appears that thereafter defendants Nos. 2 and 3 filed written statements on 29.6.1982. Defendant Nos. 2 and 3 admitted that tubectomy operation was performed on Renuben on 20.11.1980 in the Referral Hospital at Idar. It is averred that the operation was performed with due care and caution and the consent of Renuben and the respondent was obtained for the same. It is admitted that Renuben was referred to Civil Hospital, Himamagar on 26.11.1980 for further and better treatment. It is also admitted that on 1.12.1980 Renuben was shifted to Civil Hospital, Ahmedabad because her condition had deteriorated. It is averred that during treatment it was diagnosed that Renuben suffered from jaundice, and she was required to be treated in the kidney department for dialysis on 3.12.1980. Misalleged that the respondent took away Renuben from Civil Hospital, Ahmedabad to his native place on 4.12.1980 against medical advice. In short, defendants No. 2 and 3 averred that tubectomy operation was performed with due care and caution and Renuben had not died because of the complication arising from the said operation. It is further averred that Renuben died because of jaundice which had no connection with the tubectomy operation. The defendants averred that there was no negligence on the part of the doctors who treated Renuben, and the respondent was not entitled to claim any compensation, and, therefore, the suit be dismissed with costs.

4. The learned Civil Judge (SD), Himatnagar framed issues at Ex. 27. Respondent examined himself at Ex. 47 and one Hirabhai Dhulabhai Patel at Ex. 78. On behalf of the defendants Dr. Dahyabhai Shivabhai Patel, who performed tubectomy operation on Renuben at the Referral Hospital, Idar was examined at Ex. 101. Documentary evidence produced by the defendants consisted of original register showing particulars in the event of death after operation (Ex. 34), application dated 20.11.1980 for tubectomy operation (Ex. 35), form of an application for getting assistance under the resolution of Government dated 11.11.1960 of the concerned Department (Ex. 36), letter of the respondent to District Health Officer, Family Planning for recovery of expenses suffered by him on death after operation dated 21.1.1981 (Ex. 37), copy of letter written to defendants by the respondent dated 11.2.1981 (Ex. 38), letter of the defendant written in respect of death of Renuben dated 19.2.1981 (Ex. 39), copy of order of defendant (Ex. 40), notice given by the respondent through advocate dated 22.6.1981 (Ex. 41), case papers dated 20.11.1980 (Ex. 102), medical report and record of medicolegal case (Ex. 103), opinion of Hon. Professor of Medicines, Civil Hospital, Ahmedabad regarding death of Renuben dated 18.6.1981 (Ex. 104), original case papers of Renuben dated 20.11.1980 (Ex. 105) and original medical report at Mark 105/2.

5. Learned Civil Judge (SD), after appreciating the oral as well as documentary evidence produced by both the sides and after hearing the arguments of the learned Advocates came to the conclusion that Renuben died as a result of negligence and carelessness shown by the doctor at the Referral Hospital, Idar while performing tubectomy operation on 20.11.1980. The learned Judge has

also ... concluded that the defendants had failed to prove that Renuben was removed to her native place against medical advice and incomplete medical treatment. On the basis of the above conclusions, the learned Trial Judge awarded compensation of Rs. 25,000/- to the respondent to be recovered from the State of Gujarat as well as District Panchayat, Sabarkantha, which has given rise to filing of these two appeals by the respective appellants.

6. Learned AGP Mr. L.R. Pujari for the appellants in FA No. 1322 of 1986 and learned Advocate Mr. D.V. Mehta for learned Senior Advocate Mr. B.P. Tanna for the appellant in FA No. 1003 of 1987 have taken me through the entire oral as well as documentary evidence produced on the record of the Trial Court. It is the submission of the learned Advocates appearing for the appellants that in the present case there was no evidence that the doctor who performed tubectomy operation had shown utter negligence and lack of skill while performing the operation. It is submitted that proper care and precautions were taken prior to performing the operation and even during post-operative treatment. It is submitted by the learned Advocates for the appellants that burden of proving negligence was on the plaintiff and in this case he has not discharged that burden and, therefore, the appeals should be allowed. It is further submitted that the plaintiff had taken away Renuben on 4.12.1980 to his native place during treatment at Civil Hospital, Ahmedabad against medical advice and therefore also, the appeals should be allowed.

7. Learned Advocate Mr. N.N. Pandya, for Mr. A.J. Patel, for the respondent has supported the findings of the learned Trial Judge and submitted that the facts and circumstances of the case are so eloquent which are sufficient to establish negligence of the doctors who performed tubectomy operation on 20.11.1980 and who treated Renuben in Civil Hospital at Himatnagar and Civil Hospital at Ahmedabad- It is submitted by the learned Advocate for the respondent that from 20.11.1980 to 3.12.1980, the doctors who treated Renuben could not cure her ailment and, therefore, her condition deteriorated day-by-day as a result of which the doctors of Civil Hospital, Ahmedabad lost hopes of saving her life and therefore, the respondent was informed to take away his wife to his native place so that she can meet her children and other relatives. It is further submitted by the learned Advocate for the respondent that jaundice and distension of abdomen had occurred due to negligence shown by the doctor who performed the tubectomy operation at the Referral Hospital, Idar. At the end, the learned Advocate for the respondent submitted that in this case, the doctors who performed the operation and who attended on Renuben at different hospitals have shown negligence, which was against medical ethics and, therefore, the appeals should be dismissed.

8. It is an admitted fact that tubectomy operation was performed on Renuben on 20.11.1980 and because of the complications which had arisen therefrom, she was referred to Civil Hospital, Himatnagar. As at that hospital it was diagnosed that Renuben had symptoms of jaundice, she was referred to Civil Hospital,

Ahmedabad. The respondent, in his oral evidence has narrated the whole episode right from performing tubectomy operation on 20.11.1980 till Renuben died on 7.12.1980. Evidence of the respondent establishes that after the operation, Renuben had developed severe pain in the abdomen and was writhing because of pain throughout her treatment for 13 days in the hospital. It is surprising that even though Renuben was treated in Civil Hospitals at Himatnagar and Ahmedabad, she was not cured of jaundice and distension of abdomen. The case papers produced by the defendants clearly show that day-by-day Renuben had developed complications which had direct connection with tubectomy operation. It is also an admitted fact that tubectomy operation was performed after the birth of third male child and that child also expired after 6 months of the death of Renuben. It, therefore, goes without saying that as there was nobody to take care of the infant child, he also expired. The respondent, during his oral evidence, has stated that for 13 days, Renuben was in terrible and unbearable pain, and the doctor could not bring any relief to her pain. From the evidence of the respondent it is established that Renuben was aged about 28 years and was helping the respondent in carrying out agricultural operations and looking after cattles and dairy business. The respondent has lost company of his wife and suffered mental shock and agony, and he has also suffered economic loss as, after the death of Renuben, he has to hire labourers for carrying out agricultural activities and looking after cattle.

9. Appellants examined Dr. D.S. Patel who performed the tubectomy operation on Renuben on 20.11.1980 at Ex.101. He deposed that on 20.11.1980 he performed about six tubectomy operations at the Referral Hospital. He has further deposed that after the operation, Renuben had complaint of pain and as her condition was deteriorating and as there were no facilities for further treatment, she had to be removed to Civil Hospital at Himatnagar, It is also deposed by Dr. Patel that there was distension of abdomen and her condition had become serious and, therefore, there was no alternative but to transfer her to Civil Hospital at Himatnagar, Reading the evidence of Dr. Patel it transpires that tubectomy operation might have been performed in undue haste without carrying out pre-operative tests meticulously. It is the doctor's version that Renuben might be having infection of jaundice prior to the operation. If necessary investigations were carried out before performing the operation, then jaundice could have been detected and operation could have been postponed. As the required pathology tests were not carried out before the actual operation, the doctor could not know the possible danger. It also transpires from the evidence of Dr. Patel that the Referral Hospital at Idar was not having sufficient facilities for treating the patients in serious condition and, therefore, it can be said that proper pre-operative care was not taken in the case of Renuben. If timely treatment was given to Renuben, then perhaps her life could have been saved.

10. Case papers and opinion Hon. Professor of Medicine, Civil Hospital, Ahmedabad produced at Ex. 104 reveal that Renuben had Hepatitis, Renal failure and Ascitis and Ascitis is likely to be due to peritonitis and it is concluded that, in

view of the above features it can be inferred that Renuben had infective hepatitis with hepato renal syndrome, and her illness seemed to be aggravated by presence of peritoneal inflammation. Those case papers and opinion show that hepatitis, renal failure and ascitis might have been developed due to complications which had taken place after the tubectomy operation.

11. The submission of learned AGP that the burden to prove negligence on the part of the doctor, was on the respondent and mat he has failed to discharge that burden is devoid of any merits. The circumstances in which Renuben died, the case papers and the opinion of Hon. Professor of Medicines, Civil Hospital, Ahmedabad, clearly show that proper care which a medical expert is supposed to take, was not taken in the case of Renuben, as a result of which complications developed after the tubectomy operation was performed. The submission that Renuben was taken away from Civil Hospital, Ahmedabad against medical advice is also devoid of any merit. It is not possible to accept that the respondent who had tried his level best to save the life of his wife would take away his wife from the Civil Hospital, against medical advice, at the end of the treatment. It seems plausible mat when the respondent and the doctors lost hopes about survival of Renuben, he was compelled to take away Renuben to his native place. Defendants have not examined any witness to prove that Renuben was taken away from the Civil Hospital. Ahmedabad, against medical advice.

12. Even assumihg for the sake of argument that the plaintiff has failed to prove negligence on the part of the doctor who performed tubectomy operation on Renuben, looking to the facts and circumstances of the case, the victims should be awarded some monetary relief by the State Government and the District Panchayat, Sabarkantha. In A.S. Mittal and Another Vs. State of U.P. and Others, the Supreme Court considered the case of victims who had lost vision due to holding of eye camps at village Khurja. In para 13, the Supreme Court observed as under:

The necessity of maintenance of the highest standards of aseptic and sterile conditions at places where Opththalmic surgery -- or any surgery --is conducted cannot be overemphasised. It is not merely on the formulation of the theoretical standards but really on the professional commitment with which the prescriptions are implemented that the ultimate result rests. Government, States and Union, incur enormous expenditure of public money on health care. But, the standards of cleanliness and hygiene in public hospitals unfortunately, leave greatly to be desired. The maintenance of sterile, aseptic conditions in hospitals to prevent cross-infections should be ordinary, routine and minimal incidents of maintenance of hospitals. Purity of the drugs and medicines intended for man-use would have to be ensured by prior tests and inspection. But, owing to a general air of cynical irreverence towards values that has unfortunately developed and to the mood of complacence with the continuing deterioration of standards, the very concept of standards and the imperatives of their observance tend to be impaired. This is a disturbing feature. The remedy lies in a ruthless

adherence to the virtue of method and laying down practical procedures in the minutes of detail , and by exacting -- not merely expecting -- strict adherence to these procedures.

At the end, the Supreme Court, on humanitarian consideration awarded Rs. 17,500/- to each of the victims. In the facts of the present case, on humanitarian consideration also, as laid down by the Supreme Court in A.S. Mittal's case (supra), the respondent is entitled to the amount which is decreed in his favour, as compensation for the untimely death of his wife Renuben. ,

13. The learned Trial Judge awarded Rs. 5,000/- to the respondent as compensation under the head of Economic Loss suffered by him due to death of his wife. From the evidence of the respondent, it is borne out that the deceased used to help him in agricultural activities as well as cattle breeding and dairy business. I think, in the facts and circumstances of the case, the amount of Rs. 5,000/-awarded under the head of economic loss is eminently just and proper and deserves to be upheld.

The learned Trial Judge awarded Rs. 20,000/- to the respondent under the head of loss of consortium and company due to untimely death of his wife. It is an admitted fact that one son of the respondent aged about 7 years is suffering from paralysis, and the other son is aged 3 years, and there is nobody to look after them. It is also borne out mat the deceased used to help the respondent in all his daily activities as also in the upbringing of the two male children. Therefore, the amount of Rs. 20,000/- awarded by the learned Trial Judge as compensation under the head of loss of consortium and company cannot be said to be excessive or speculative. Renuben died a tragic death, which cannot be compensated in terms of money. Pain and suffering which she and the respondent had undergone for 13 days also cannot be lost sight of. Therefore also the amount of Rs. 20,000/-awarded for the untimely and tragic death of Renuben is quite just and proper and deserves to be upheld.

The learned Trial Judge while awarding compensation of Rs. 25,000/- to the respondent has directed State of Gujarat to pay Rs. 12,500/- and the District Panchayat, Sabarkantha at Himatnagar to pay the remaining amount of Rs. 12,500/- with proportionate costs and interest, which is also eminently just and proper and deserves to be upheld.

14. As a result of the foregoing discussion, both the appeals fail and, they are accordingly dismissed with no order as to costs.