
(2011) 07 MP CK 0099
In the Madhya Pradesh High Court
Case No : F.A. No. 60 of 2007

State of M.P. and Others

APPELLANT

Vs

Raghunath Singh and Others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Citation : (2012) 1 MPJR 31

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Vivek Phadke, G.A, for the Appellant; Sameer Verma, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the judgment dated 30/08/06 passed by ADJ, Jobat Distt. Jhabua in Civil Suit No. 2-B/06, whereby suit filed by respondents was allowed and the appellants were directed to pay, a sum of Rs. 1,50,000/- along with interest @ 6% P.A., present appeal has been filed. Short facts of the case are that the respondents filed a suit against the appellants alleging that deceased Idibai was wife of respondent No. 1 and mother of respondent Nos. 2 to 4 and was resident of village Masni Tehsil Alirajpur District Jhabua. It was alleged that deceased Idibai attended the Primary Health Center, Jobat on 02/12/02, where family planning camp was arranged by the State Government. It was alleged that the deceased was injected by the Doctor on duty for preparation of her family planning operation. It was alleged that the medicine which was injected was excessive in quantity and was also of expiry date, with the result Idibai became unconscious. It was alleged that she was shifted to District Hospital, Jhabua but in transit she passed away. In the suit it was alleged that because of negligence on the part of medical officers of the State Government, incident took place, therefore, respondents be compensated.

2. The suit was contested by the appellants by flung written statement, wherein liability was denied. It was prayed that the suit be dismissed. After framing of

issues and recording of evidence learned trial Court decreed the suit in part as stated above, against which present appeal has been filed.

3. Learned counsel for the appellants argued at length and submits that the impugned judgment passed by the learned Court below is illegal, incorrect and deserves to be set aside. It is submitted that it was a family planning camp, which was arranged by the State Government, in which more than 10 women were injected. It is submitted that family planning operation was carried out by the appellants successfully in all other cases except the case of deceased. It is submitted that in the post mortem report it has come that the cause of death was the shock, therefore, appellants cannot be held liable for payment of compensation. It is submitted that in the facts and circumstances of the case, appeal filed by the appellants be allowed and the impugned judgment passed by the learned Court below be set aside.

4. Learned counsel for respondents submit that from the evidence on record learned Court below has reached to the conclusion that negligence was on the part of appellant. It is submitted that the claim was for Rs. 3,00,000/-, but only Rs. 1,50,000/- was awarded. It is submitted that the deceased Idibai was the first lady to whom injunction was administered and since she became unconscious immediately after the injections therefore, camp itself was cancelled, therefore, there was no occasion to administer the injection to other women. It is submitted that otherwise also there is no evidence on record in this regard that in the said camp other women were successfully operated. Learned counsel placed reliance on a decision in the matter of Jacob Mathew Vs. State of Punjab and Another, wherein Hon''ble Apex Court observed that to prosecute a medical professional for criminal negligence it must be shown that the doctor 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. It was further held that test for determining medical negligence as laid down in the matter Gourikutty Vs. Raghavan, wherein in a case where plaintiff underwent an operation for tubectomy in Government Hospital and on operation table she lost consciousness which she has not retained while she was aged 30 years only, Divisional Bench of Kerala High Court held that it was an unforeseen accident which unfortunately happened on the operation table by which she sustained some irreparable brain damage as a result of brain anoxia. It was further held that the State is liable for payment of compensation. On the strength of aforesaid position of law learned counsel submits that the appeal filed by the appellants be dismissed. From perusal of the record it is evident that sufficient evidence is on record to show that because of negligence on the part of appellants respondent No. 1 lost his wife and respondent Nos. 2 to 4 lost their mother. The suit was filed for compensation for a sum of Rs. 3,00,000/-, however learned Court below has awarded decree of Rs. 1,50,000/-. No cross appeal has been filed by the respondents. After taking into consideration all the evidence on record, this Court is of the opinion that the findings recorded by the learned Court below are based on due appreciation of evidence, which requires

no interference. Hence appeal filed by the appellants has no merits and the same stands dismissed. Appellants are directed to comply with the decree within a period of three months positively without fail, failing which appellants shall be liable to pay interest @ 12% P. A from the date of default.

No order as to costs.