
(2018) 08 MP CK 0049
In the Madhya Pradesh High Court
Case No : First Appeal No.247 Of2000

Zarina W/O Nyaz Mohammad

APPELLANT

Vs

State Of Madhya Pradesh. & Another

RESPONDENT

Date of Decision : 06-08-2018

Acts Referred:

Code Of Civil Procedure, 19708 — Section 151, Order 41 Rule 27

Citation : (2018) 08 MP CK 0049

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Heard on I.A. No.1900/2018, which is an application under Order 41 Rule 27 r/w section 151 of the Code of Civil Procedure and the same stands

allowed.

The present First Appeal has been filed against the order dated 29.01.2000 passed by the learned III Additional District Judge, Ujjain in Civil Suit

No.5-B/90 (New No.1-B/2000).

The facts of the case reveal that the present appellant before this Court, who is a housewife, was admitted at Government District Hospital, Ujjain for

family planning operation on 06.12.1989 and while the operation was going on, she was administered saline/glucose. The undisputed facts reveal that

the saline was administered. Later on, there was a swelling at the place, where the needle was inserted and on account of heavy swelling, she was

shifted to M.Y. Hospital, which is again a Government Hospital at Indore. In spite of the treatment given to her, she developed gangrene and her hand

was amputated above the elbow joint. The plaintiff, who is haling from a poor

family, was working as daily wager and was also involved in stitching work, became disabled and filed a civil suit claiming compensation from the Government to the tune of Rs.1,85,000/-. The plaintiff has claimed amount on various heads including loss of earning on account of permanent disability, which was more than 50%, the trauma, which she has suffered and the money spent on her, while she has taken treatment and after she was discharged. A written statement was filed before the trial Court on behalf of the State of Madhya Pradesh as well as on behalf of other defendant and issues were framed by the trial Court. The plaintiff was examined before the trial Court and she has categorically stated before the trial Court that on 06.12.1989 saline was administered and on account of improper insertion of needle and on account of infection, she was feeling burning sensation in her hand later on resulting into swelling in her hand and she was shifted to M.Y. Hospital, Indore, where her hand was amputated. The plaintiff has categorically stated that she has protested in the matter and she has submitted complaint to doctors, however, defendant No.2 - Dr. R.S. Chauhan did not pay any heed to her protest.

In spite of there being evidence on record, the trial Court has held the issues as not proved in respect of the aforesaid averments. The plaintiff as well as the other witnesses have stated before the trial Court that she was having pain in her hand, she became critical and again this issue has been held as not proved even though the plaintiff was shifted from Government District Hospital Ujjain to M.Y. Hospital, Indore.

Another issue, which was framed, was in respect of amputation and the trial Court has held that the doctors were not responsible in the matter of amputation.

One of the issues i.e. whether condition of the plaintiff became serious in the hospital on account of insertion of needle for administering saline has been held as proved by the trial Court.

Dr. R.S. Chauhan (D.W-1) was examined before the trial Court and he has admitted that the plaintiff was admitted on 06.12.1989. In paragraph-4 of his statement, he has admitted that as she was having pain in her hand, she was referred to M.Y. Hospital, Indore. He has admitted that family

planning operation took place on 06.12.1989, but he was not the person, who has given injection to the plaintiff. He has again categorically admitted in

his cross-examination that he saw the swelling about which the complaint was lodged by the plaintiff. He has also admitted that the hand became slightly bluish and there was probability of gangrene also and later on he has admitted that after obtaining opinion from surgical expert, she was referred to M.Y. Hospital, Indore. The doctor, at the same time, stated that it was the nurse, who has given injection to the patient as well as inserted the saline drip in her hand.

In spite of the aforesaid clinching evidence, the trial Court has decided the issues against the plaintiff.

The statement of Smt. Zarina (P.W-1) establishes that she was subjected to operation and saline was given to her, which was finally resulted in

gangrene and her hand was amputated above the elbow joint. She has also stated about loss of earning and about the disability suffered by her.

Smt. Mehrat Bee (P.W-2), who is sister-in-law of the plaintiff, has also stated about the operation and about the amputation and has supported the

case of the plaintiff. She has given similar statement like the plaintiff.

The documents brought on record are the document relating to treatment of the plaintiff right from her admission at M.Y. Hospital, Indore, which is

again a Government Hospital and she was shifted from Government District Hospital, Ujjain to M.Y. Hospital, Indore and the factum of amputation is

also not in dispute. There is disability certificate also and she has suffered 50% disability.

In the present case, the evidence produced before the trial Court establishes that on account of insertion of needle and improper post-operative care,

she has developed gangrene in her hand and finally amputation has taken place on her hand above her elbow joint. There is certainly a loss of earning.

She was working as a daily wager and also doing the stitching work and now she has to work only with one hand for the remaining years of her life.

The issue No.1 framed by the trial Court was in respect of the fact whether her problem was looked after properly or not at the relevant point of time

by defendant No.2. The statement of defendant No.2 reveals that he was not the doctor, who has inserted needle in her hand and as per his statement

it was some sister, who has inserted the needle resulting in amputation of her hand, and therefore, defendant No.2 cannot be made liable for payment

of compensation.

The other issues relating to amputation on account of the lapses committed by the hospital, are decided in favour of the plaintiff, as she went inside the hospital as a hail and healthy woman with both the limbs. It was only after she was inserted the needle for administering saline, she developed a gangrene resulting into amputation of her hand, and therefore the other issues in respect of payment of compensation are answered in favour of the plaintiff.

Keeping in view the totality of facts and circumstances of the case, specially in light of the percentage of the disability (amputation of one limb above elbow joint) and in the considered opinion of this Court, the plaintiff has prayed for a very meager amount of compensation to the tune of Rs.1,85,000/-

, and therefore, the prayer made by the plaintiff is hereby allowed. The plaintiff shall be entitled for compensation to the tune of Rs.1,85,000/- along

with interest @ 9% per annum right from the date on which the suit was filed.

With the aforesaid, the present First Appeal stands allowed with costs.

A decree be drawn accordingly.