



RSA-4214-2002 (O&M)

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309 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4214-2002 (O&M)

Date of decision : 18.11.2024

Punjab State and others

...Appellants

Vs.



...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Salil Sabhlok, Sr. DAG, Punjab.

Ms. Simran, Advocate for
Mr. Pardeep Goyal, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)CM-9441-40-C-2002

1. These applications have been filed under Section 151 CPC for condonation of delay of 22 days in re-filing and 37 days in filing the present appeal.
2. In view of the grounds taken in the applications, delay of 22 days in re-filing and 37 days in filing the appeal respectively is condoned.
3. Civil Miscellaneous applications are allowed.

Main case

1. This is defendants' regular second appeal against the judgment passed by the First Appellate Court, which in turn has set aside the trial Court's judgment. The respondent filed a suit for recovery of Rs.90,000/- as compensation alongwith interest @ 18% per annum on the ground that she became pregnant after her sterilization operation.



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2 Learned trial Court found that the plaintiff gave birth to a female child after the sterilization operation, however, she failed to prove negligence of the Doctor. The respondent while appearing in evidence admitted that she went to the hospital for check up with her free will and before performance of the operation, she filled a form which bears her signatures. In the aforesaid form, it has been stated that she will not hold any Doctor responsible for failure of the operation. DW1-Hardeep Sharma also stated that no assurance was given to the petitioner regarding success of the operation and she was apprised of the fact that sometimes there is failure of the operation, for which, no medical authority will be held responsible. The operation was performed by well qualified and experienced Surgeon.

3. The First Appellate Court reversed the judgment on drawing an assumption that after the sterilization operation, the respondent will not conceive another child. The Court further held that the appellant did not assert that the respondent was ever called for follow up to see whether the operation was successful or not. The First Appellate Court thus awarded Rs. 30,000/- alongwith interest @6% per annum.

4. Learned State counsel has drawn the attention of the Court to a judgment passed by the Division Bench of the Supreme Court in 'State of Punjab vs. Shiv Ram and others', 2005 (7) SCC 1 to contend that the operating Surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child on failure of sterilization operation in absence of evidence to prove that there was negligence on the part of Surgeon in performing the surgery.



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5. Learned counsel representing the respondent has referred to the statement of the respondent to contend that negligence on the part of the Doctor has been asserted.

6. On a Court question, learned counsel representing the respondent admits that no medical evidence has been produced to prove Surgeon's negligence. The respondent admits that she signed the form in which it was stipulated that the sterilization operation may not give desired result.

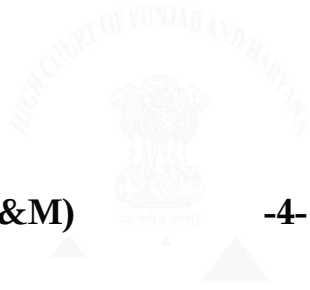
7. In order to award damages in the cases pertaining to medical negligence, the plaintiff is required to lead positive evidence including the opinion of expert in appropriate cases.

8. The medical negligence cannot be assumed only because a surgical procedure has failed to achieve the desired result. The Supreme Court has held that in absence of allegation that the Surgeon was not competent to perform the surgery or the Surgeon was negligent, the suit for damages cannot be decreed.

9. The First Appellate Court has assumed negligence only on the basis of a presumption. From reading of the judgment passed by the trial Court, it is evident that the operating Doctor, Sh. Hardeep Sharma appeared as DW1 and stated that no assurance was given to the respondent regarding the success of the operation and she was apprised of the fact that sometimes there is failure of the operation, for which, no medical authority will be held responsible.

10. Keeping in view the aforesaid discussion, the impugned judgment is not sustainable, hence, it is set aside and that of the trial Court is restored.

11. The appeal is allowed.



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12. All the pending miscellaneous applications, if any, are also disposed of.

18.11.2024

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No

