

Raj Kumar who had also signed it. The Courts below have concurrently found that there is stipulation in this form that there are some chances of failure of the operation. Plaintiff has not examined her husband to deny his signatures on the consent form, Exhibit D-2, nor any expert has been examined to show that the signatures of her husband on the said form were forged by the defendants. This led the Courts below to hold that the plaintiff had already been apprised prior to the operation that it is not fool-proof method. The judgment of the Hon'ble Supreme Court in State of Haryana v. Smt. Santra, 2000(2) RCR(Civil) 739(SC), is of no help to the appellant as the facts therein were altogether different. A 3-Judge Bench of the Hon'ble Supreme Court in State of Punjab v. Shiv Ram and others, 2005(4) RCR (Civil)100, has observed as follows:-

" 21. We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to satisfy Bolam's test. So also, the surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100% exclusion of pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee."

The judgment in Shiv Ram's case(supra) has also been followed by the Hon'ble Supreme Court in another judgment in State of Haryana and others v. Raj Rani, 2005(4) RCR(Civil) 169. Nothing has been shown that the findings of fact so recorded by the Courts below suffer from any infirmity or are contrary to the record. No question of law, muchless substantial, arises in the present appeal.

Consequently, the appeal being without any merit is hereby dismissed.

January 30, 2009
JS

(ARVIND KUMAR)
JUDGE