Punjab-Haryana High Court

Avtar Kaur vs Union Of India And Others on 30 January, 2009
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.M. No. 10641-C of 2008 and RSA No. 3581 of 2008

Date of decision: 30.1.2009

Avtar Kaur ... Appellant.

Versus

Union of India and others ... Respondents

Present: Mr. Padam Jain, Advocate,

for the appellant.

. . .

ARVIND KUMAR, J:

C.M. No. 10641-C of 2008:

For the reasons mentioned in the application, the prayer made therein is allowed. Applicant-appellant is permitted to file the present appeal as an indigent person. CM stands disposed of accordingly.

RSA No. 3581 of 2008:

Appellant before this Court was the plaintiff who has been non-suited by the Courts below in a suit for recovery of Rs.10 lakhs as damages, expenses etc. The case of the plaintiff as set out in the plaint, was that on 18.9.1995, she had undergone Tubectomy operation at Lala Lajpat Rai Hospital, Railway Coach Factory, Kapurthala, so performed by Dr. Raj Kumar who assured that it is fool-proof method and is fully successful. However, she became pregnant thereafter and therefore, it was alleged that the operation had been conducted with negligence and carelessness. The present suit has been filed claiming compensation/damages against the doctor and the Union of India etc. The stand of the defendants is that she was never assured that the operation is fool-proof method or is 100 per cent successful but the assurance was given that the operation will be done with all reasonable care and caution. It was conveyed that such like operations are not always fool-proof and the consent of plaintiff's husband was also taken.

Dr.Raj Kumar who had conducted the operation is MBBS and MS in general surgery. Both the Courts below upon appreciation of evidence adduced by the parties, have concurrently found that the plaintiff has failed to prove negligence on the part of the doctors in performing the operation. The sheet-anchor of the case is consent form, Exhibit D-2, which pertains to the plaintiff. This consent form bears the signatures of Gurdip Singh, the husband of the plaintiff. The said form has been proved by DW-2, Harminder Kaur, Nursing Sister, who filled it and it was also proved by Dr.

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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 ( ARVIND KUMAR)
JS JUDGE