



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

FIRST APPEAL No. 172 of 2010

LADY KISHWAR

Versus

STATE OF M.P. AND OTHERS

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Appearance:

Shri Sunil Kumar Jain - Advocate for the appellant.

Shri Rajendra Jain - GA for the respondents/State.

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Reserved on : 08.09.2026

Delivered on : 16.09.2026

JUDGMENT

The appellant/plaintiff, being aggrieved by the judgment and decree dated 20.03.2006 passed by the Fourth Additional District Judge (Fast Track), Shivpuri, in Civil Suit No.3-B/2006, whereby her suit for compensation/damages on account of medical negligence on the part of the defendants has been dismissed, has filed the present appeal under Section 96 of the CPC.

2. It is the case of the plaintiff that she belongs to weaker section of society and is financially poor, having no independent source of income. Her husband is a labourer, and they are residing in rented accommodation. The plaintiff was already having five children, of whom the youngest daughter was 10 months old. She, therefore, contacted defendant no.3 & 4 for sterilization operation at District Hospital, Shivpuri. After performing the necessary tests and completing all formalities, defendant no.4 performed the



operation on 17.03.2004.

3. It is the case of the plaintiff that for about 1 to 2 months, everything went well. Thereafter, she felt stomach pain and, therefore, visited defendant no.4. After a routine check-up, she prescribed certain medicines. However, the plaintiff did not get relief and again visited defendant no 4 about 3 to 4 times.

4. Having not received any relief, the plaintiff visited Dr. Uma Jain in the District Hospital, Shivpuri itself, who advised her to undergo Ultrasound Sonography. In the Ultrasound report dated 04.07.2004, it was found that the plaintiff was pregnant. Dr. Jain asked the plaintiff to show all the reports to the same doctor who had performed the operation. The plaintiff accordingly again visited defendant no.3 & 4 with all her reports. It is alleged by the plaintiff that defendant no. 3 & 4 did not treat her properly, nor gave her correct advice. On the contrary, the plaintiff was accused of suppressing the factum of her pregnancy on the date of the operation.

5. The plaintiff contended that the sterilization operation was performed after all necessary tests and, therefore, the defendants were supposed to know about her pregnancy. However, this fact was not disclosed to her, and the operation was performed. She thus alleged medical negligence on the part of defendant no.3 & 4.

6. It is further averred by the plaintiff that she made a complaint against defendant no.3 & 4 to the Collector, Shivpuri, on 27.09.2004, who forwarded the same to defendant no.2 for inquiry. It is alleged that defendant no.2 closed her complaint without proper inquiry on 22.11.2004.



7. The plaintiff gave birth to her sixth (female) child on 25.10.2004. Later, after serving notice under Section 80 of the CPC on the defendants on 18.01.2005, the present suit was filed on 24.12.2005. The plaintiff claimed compensation of Rs.1.5 lakh jointly and severally from the defendants.

8. The defendants filed a common written statement, denying the plaintiff's claim. In substance, it was their case that the operation was performed as per the protocol and prescribed procedure. There was no negligence on the part of the defendants. It is averred that the tests performed before the surgery did not disclose the pregnancy and, therefore, the defendants had no occasion to know about the same. They also relied upon the consent letter dated 17.03.2004, whereby the plaintiff had willingly agreed to undergo the operation.

9. It is also averred in the written statement that, based upon the Sonography report dated 04.07.2004, the plaintiff had a pregnancy of 18 to 20 weeks. When the plaintiff met defendant no.4 on 06.07.2004, she advised her for termination of pregnancy. However, the plaintiff did not turn up. As per defendants, the plaintiff conceived on or about 10.03.2004. As per their case, it is not possible to detect a pregnancy of about one week by Sonography or Pathological tests.

10. Before the trial court, the plaintiff examined herself as PW-1, wherein she gave her version as stated in the plaint. In para 6, she stated that she did not know about her pregnancy on the date of the operation and also confirmed the birth of her sixth child on 25.10.2004 in para 7 of her statement.



11. Dr. Uma Jain was also examined as PW2, who was working as Assistant Doctor in District Hospital. As per her statement, the plaintiff approached her on 20.05.2004, complaining of stomach pain. She advised the plaintiff for Sonography. on 01.07.2004 i.e. after about one and a half months of the plaintiff approaching her. As per her version, the plaintiff came to her on 09.07.2004 along with the Sonography report. She had a pregnancy of about 20 weeks. During her cross-examination in para 5, Dr. Jain stated that the plaintiff did not tell her about her sterilization operation when she approached her. In para 7, Dr. Jain confirmed that pregnancy of one month is not detectable by Ultrasound or Sonography. However, pregnancy of one week could be detected by urine test. In para 8, she stated that pregnancy up to 20 weeks can be terminated upon the advice of two doctors. In para 9, Dr. Jain stated that the plaintiff did not show her the prescription of defendant no.4, who had initially examined her.

12. The plaintiff also examined Dr. Bhagwat Bansal as PW3, who had performed the Sonography test. She stated that on 04.07.2004, the plaintiff had a pregnancy of 22 weeks. He stated that there can be a difference of one week, on either upper or lower side, in his opinion.

13. From the defendants' side, Dr. J. P. Yadav was examined as DW1, who was posted as Chief Medical and Health Officer at Shivpuri. He supported the defendants' case and stated that there was no negligence on the part of defendant no.3 & 4. Dr. S. K. Jain was examined as DW2, who had inquired into the complaint made by the plaintiff. He stated that after inquiry, he did not find any negligence on the part of defendant no.3 & 4.



14. Defendant no.3 was examined as DW3, who also made a statement in consonance with the written statement. Likewise, defendant no.4 (DW-4) also made similar statement.

15. Learned trial Court after appreciating the oral and documentary evidence, dismissed the suit vide judgment and decree dated 20.03.2006. Trial Court did not find any negligence on the part of defendants no.3 & 4 in performing the operation.

16. The learned counsel for appellant/plaintiff submitted that performing the plaintiff conceived on account of failure of family planning operation performed by defendant no.3 & 4 and, therefore, the plaintiff is entitled to compensation. He referred to oral testimony of plaintiff and defendant's witnesses in support of his submission. It is his further submission that, if the plaintiff was pregnant at the time of operation, the same would have come in the tests performed before operation. He relied upon Apex Court judgment in the case of *State of Haryana & Ors. Vs. Smt. Santra* reported in *(2000) 5 SCC 182*.

17. On the other hand, the leaned Govt. Advocate supported the impugned judgment and decree. At per his submission, mere failure of operation would not be a ground to hold the doctors guilty of medical negligence. He further submitted that the tests performed before operation did not disclose plaintiff's pregnancy and the defendants acted upon the pathology reports. Further, since the operation did not fail, question of medical negligence on the part of defendants does not arise.

18. Heard the learned counsel for parties and perused the records.



19. Negligence is a “tort”. Every doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. This is what is known as “implied undertaking” by a member of the medical profession that he would use a fair, reasonable and competent degree of skill. This has been held by Apex Court in the case of *Santra (supra)* relied upon by learned counsel for the appellant. Later on, the Apex Court in the case of *State of Punjab Vs. Shiv Ram & others* reported in (2005)7 SCC 1, dealing with the issue of medical negligence, held in para 25 as under:

"25. We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilisation 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."

20. The judgment of *Santra (supra)* was distinguished by Apex Court



in *Shiv Ram (supra)* by holding as under:

27. Mrs K. Sarada Devi, the learned counsel appearing for the plaintiff-respondents placed reliance on a two-Judge Bench decision of this Court in State of Haryana v. Santra [(2000) 5 SCC 182:JT (2000) 5 SC 34] wherein this Court has upheld the decree awarding damages for medical negligence on account of the lady having given birth to an unwanted child on account of failure of sterilisation operation. The case is clearly distinguishable and cannot be said to be laying down any law of universal application. The finding of fact arrived at therein was that the lady had offered herself for complete sterilisation and not for partial operation and, therefore, both her fallopian tubes should have been operated upon. It was found as a matter of fact that only the right fallopian tube was operated upon and the left fallopian tube was left untouched. She was issued a certificate that her operation was successful and she was assured that she would not conceive a child in future. It was in these circumstances, that a case of medical negligence was found and a decree for compensation in tort was held justified. The case thus proceeds on its own facts.

21. For the same reasons, the present case is distinguishable on facts from the case of *Santra (supra)*. The appellant therefore, does not get any benefit from *Santra (supra)*.

22. From *Shiv Ram (supra)*, it is settled that mere failure of operation would not be a ground to hold defendant no.3 & 4 negligent. For holding



them guilty there has to be a positive evidence to show that they did not use a fair, reasonable and competent degree of skill. Keeping in view the aforesaid legal position, the facts of this case needs to be examined.

23. The plaintiff's main grievance is that she became pregnant even after operation was performed by the defendants. However, not only the defendants' witnesses, who are doctors by profession, even the plaintiff's witnesses namely- Dr. Uma Jain (PW-2) and Dr. Bhagwat Bansal (PW-3) have also stated about the plaintiff's pregnancy of 22 weeks on 04.07.2004. Upon calculation, the date of plaintiff's conceiving would come prior to the date of operation. Further, the plaintiff gave birth to a child on 25.10.2004. On this basis also, the date of her conceiving would come prior to the date of operation.

24. The learned Trial Court has, therefore, correctly appreciated the facts and evidence of the case while holding that the plaintiff became pregnant prior to her operation on 04.07.2004. Thus, the allegation that plaintiff conceived on account of failure of operation is not established.

25. Plaintiff's another allegation is that the defendants suppressed the factum of her pregnancy at the time of performing operation and performed the operation even knowing that plaintiff is pregnant. It is not in dispute that Pathological tests were conducted before surgery wherein plaintiff's pregnancy was not detected. Admittedly, Pathological tests were also not performed by defendant no.3 & 4. The person who performed Pathological test is not party to the suit. The defendant no.3 & 4 acted upon the Pathological report. When the pregnancy was not detected in tests, the



doctors cannot be held guilty of not disclosing the factum of plaintiff's pregnancy to her.

26. Thus, the allegations upon which the compensation is claimed by the plaintiff i.e. the failure of sterilization operation is not made out. From the collective appreciation of plaintiff and defendants' evidence, it is established on record that pregnancy of plaintiff was prior to the operation. Therefore, it cannot be said that surgery performed by defendant no.3 & 4 failed.

27. Upon overall appreciation of facts and evidence which is available on record, this Court is satisfied that the judgment and decree dated 20.03.2006 passed by the Fourth Additional District Judge (Fast Track), Shivpuri, in Civil Suit No.3-B/2006 is based upon proper appreciation of facts and the same is accordingly upheld.

28. The appeal therefore, fails and is **dismissed**. The parties shall bear their respective costs.

(ASHISH SHROTI)
JUDGE

Anil*