

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****221****RSA-5615-2015(O&M)****Date of decision: 15.07.2025****Primary Health Centre & Another****...Appellant(s)****Vs.****Raj Kaur****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. M.S. Teji, AAG Punjab.

Mr. S.S. Rangji, Advocate
Mr. Didar Singh, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Appeal has been filed by the defendants challenging the judgment of the learned First Appellate Court.

2. Brief facts of the case are that the plaintiff/respondent had filed a suit for recovery of Rs.5 lakh from the defendants on the ground that plaintiff had undergone Tubectomy at the Primary Health Centre, Harpalpur on 14.09.1999, which was conducted by defendant No.1. Despite that plaintiff had become pregnant with twins who were delivered on 02.06.2000 at Neelam Hospital and Maternity Home, Rajpura. It was averred that she had spent Rs.20,000/- on her delivery and treatment. It was further averred that plaintiff already had 6 children prior to the Tubectomy and now she had



8 children. Therefore, due to the negligence of defendant No.1, life of plaintiff had *“become dark and she has become mentally upset, so she is entitled to get Rs.5 lacs as compensation from the defendants. It is alleged that the plaintiff has no source of income and future of plaintiff, her children and family has become dark. It is alleged that the plaintiff requested the defendants so many times to pay the compensation amount to the plaintiff but to no effect.”* Hence, present suit was filed by the plaintiff on 7.08.2014.

3. Defence of the appellants was struck off as they failed to file written statement. However, arguments were advanced by the defendants on the basis of material evidence available on record.

4. The trial Court vide judgment and decree dated 07.08.2014 dismissed the suit of the plaintiff. However, appeal filed by the plaintiff was allowed by the Additional District Judge, Patiala vide judgment and decree dated 31.03.2015; thereby decreeing the suit of the plaintiff as follows: -

“9. In view of the reasons advanced as above, the present appeal is hereby allowed and the Impugned Judgment and decree dated 7.8.2014 passed by the learned trial court is hereby set aside and the suit filed by the appellant/ plaintiff before the learned trial court is hereby decreed as prayed for and the State is held vicarious liable to pay the compensation amount of Rs. 5 lacs as prayed for to the present appellant/plaintiff within a period of three months from today along with interest @6% per annum from the date of filing of the suit till its actual payment. The present is disposed of in the above terms. Decree sheet be prepared Appeal file be consigned to the record room whereas



the trial court be returned as per ruled along with the copy of Judgment.”

5. Hence, present second appeal by the defendants.
6. It is inter alia submitted by learned counsel for the appellants/defendants that the appellants were not liable to pay the compensation amount of Rs.5 lakh as plaintiff had failed to prove negligence. Moreover, plaintiff had been informed prior to the operation that all operations are not successful. Yet plaintiff had chosen to undergo the operation at her own risk and liability. As such, the appellants cannot be held liable. In support, learned counsel relies upon three-Judge Bench judgment of Hon'ble Supreme Court in **State of Punjab v. Shiv Ram, (SC) : Law Finder Doc ID # 84707**; and judgments of this Court in **“The State of Haryana & Others Vs. Ram Singh & Another” RSA-3889-2001 decided on 08.04.2025**; **“Director, Punjab Health Corporation & Others Vs. Suraj Mukhi” RSA-2131-2007 pronounced on 09.12.2024**; and **“Shinder Kaur Vs. Government of Punjab & Others” RSA-801-1995 decided on 27.05.2024**.
7. Per contra, learned counsel for the plaintiff rebuts the submissions made on behalf of the defendants and submits that negligence on part of defendants is made out from the fact that even after the operation the plaintiff got pregnant and gave birth to twins. It is further submitted that mere apprising the plaintiff of the fact that 5% of such operations are unsuccessful, would not imply that there was no failure of the surgery. It is accordingly submitted that there is no error in the impugned judgment and



decree of the learned First Appellate Court; and therefore, the present appeal deserves to be dismissed.

8. No other argument is made on behalf of the parties.

9. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of the appellants.

10. The record reveals that plaintiff had failed to prove any negligence on part of defendant No.1. Only a bald allegation has been made by the plaintiff in this regard. However, no evidence whatsoever has been led by the plaintiff to make good her allegation that there was any negligence by defendant No.1 in conducting the operation.

11. Further, it is admitted fact on record that prior to the operation, the plaintiff was apprised by the defendants vide Ex.D1 that 5% tubectomy operations fail. After understanding the same, the plaintiff had duly affixed her thumb impression upon Ex.D1. The said facts were attested to even by PW2 Gurmeet Kaur who had undergone a similar successful surgery. As such, the defendants cannot be held liable. It is in view of these facts that the learned trial court had dismissed the suit.

12. The relevant findings of the learned trial Court in judgment dated 07.08.2014 in respect of Ex.D1 are as follows:-

“Evidence Act 1872, S.114- Non examination of party to the lis-Leads to drawing of an adverse inference against that party but the case law cited above is not applicable in the present case as Ld. Govt. Pleader draw attention of this Court



towards Ex.D1 wherein at point C the thumb impression of Raj Kaur is appended. He argued that above the thumb impression of Raj Kaur it is written that "it was told to me that 5% operations will fail and further draw the attention of this Court towards the cross examination both the Pws. In cross examination, the attention of PW1 Raj Kaur plaintiff was drawn towards Ex.D1 where it was clearly mentioned that sometimes the operation fails and due to that the doctors and civil hospital is not responsible and in reply to the said, Raj Kaur, plaintiff in her cross examination stated that she does not know about it but she only put her thumb impression. Again, her attention was drawn towards Ex.D1 wherein it is written that "I am told that 5% operations fails" and she replied to this that she put her thumb impression and does not know about it. Further, in cross examination PW2 Gurmeet Kaur stated that it is correct that Raj Kaur put her thumb impression on the form with her free will. She further deposed that her operation was also conducted with plaintiff Raj Kaur and thereafter she admitted that after operation, no child was born. Both the Pws in their cross examination admitted the thumb impression of Raj Kaur on Ex. D1 i.e. the form got signed by the hospital authorities and it is clearly mentioned in that form that 5% operations fail. The plaintiff also admitted her thumb impression under the undertaking of the hospital authorities where above the thumb impression of plaintiff, it is mentioned that "It is told to me that 5% operations fails" and PW2 Gurmeet Kaur also admitted in her cross examination that plaintiff put her thumb impression with her free will under the said undertaking."



13. However, the above said cogent findings of the Id. trial Court have been reversed by the learned lower Appellate Court on the spurious reasoning that non-filing of the written statement by the appellants amounts to admission of negligence on their part as the defendants had failed to specifically deny the allegation of negligence of defendant No.1 in performing the Family Planning Operation. I find the said reasoning of the lower Appellate Court to be incorrect. Mere non-filing of the written statement by the appellants cannot be construed as an admission of negligence. The entire facts have to be seen together and cannot be read piecemeal. Rather the appellants had strongly contested the case by placing reliance upon material evidence on record and made out a veritable case in their favour. As such, non-filing of the written statement would not cause prejudice to their case in any manner.

14. In view of the clear categoric findings of the learned trial court reproduced above, suit of the plaintiff could not have been decreed only on the ground that no written statement had been filed by the defendants. It is my view that when the defendants had been able to make out a defence in their favour on the basis of material available on record, which established that there was no negligence on part of defendant No.1, it could not have been held that merely because no written statement was filed, it amounted to admission of negligence. In this regard, the lower Appellate Court also ought to have appreciated/considered that the plaintiff had not



led a smidgen of evidence to indicate, let alone prove any negligence on part of defendant No.1.

15. In these facts, the present case is squarely covered by the 3-Judge Bench judgment of the Hon'ble Supreme Court in **Shiv Ram (supra)**, relevant extracts of which read as follows: -

“21. 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.

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23. Mrs. K. Sarada Devi, the learned counsel appearing for the plaintiffs-respondents placed reliance on a 2-Judge Bench decision of this Court in **State of Haryana & Ors. v. Smt. Santra, 2000(2) RCR (Civil) 739 (SC) : 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.

24. The methods of sterilisation so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilised woman can become Pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of Pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to subsection (2) of Section 3 provides –

"Explanation II. - Where any Pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted Pregnancy may be



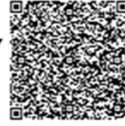
presumed to constitute a grave injury to the mental health of the Pregnant woman."

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26. The cause of action for claiming compensation in cases of failed sterilisation operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of Pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilisation operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed."

16. The learned lower Appellate Court has sought to distinguish the judgment in **Shiv Ram (supra)** on the mistaken apprehension that: -

*"The case law titled as "**State of Punjab Versus Shiv Ram and Ors. decided by the Hon'ble Supreme Court of India in Civil Appeal No. 5128 of 2002 on dated 25.8.2002**, relied upon by the learned Government Pleader as well as the learned trial court while passing the impugned judgment and decree dated 7.8.2014 is also not applicable to the peculiar factual matrix of the present case as in that case titled as "**State of Punjab Versus Shiv Ram and Ors**, the Hon'ble Supreme Court of India has held that if there is no negligence to perform sterilize operation, then subsequently on account of failure of said operation, the concerned lady became pregnant then such concerned doctor/Surgeon is not liable whereas in the present case, the present appellant/plaintiff has duly proved on record that while family planning operation was conducted her on dated 14.9.1999 by the respondent/defendant no.1, he was negligent in performing the aforesaid family planning*



*operation and to disprove the same, the respondent/defendant no. 1 has not filed any plea of defence or led any evidence in his defence to disprove the same and thus, in the present case, the negligence on the part of the respondent/defendant no. in performing the family planning operation on the person of present appellant/plaintiff Raj Kaur is duly proved on record and the ratio of the aforesaid case law titled as "**State of Punjab Versus Shiv Ram and Ors(supra)** is not applicable in the present case."*

17. However, in view of the discussion above, the above-said reasoning is patently and completely incorrect. The learned lower Appellate Court has assumed that defendant No.1 was negligent as no written statement was filed. Mere assumption is not sufficient to decree the suit for grant of compensation on the basis of allegation of tort. This was especially so in view of Ex.D1, which is the form filled by the plaintiff at the time of operation wherein it is printed that there is no absolute guarantee of 100% success of Tubectomy.

18. Even further, there is no finding of the lower Appellate Court that the doctor was negligent in performing the operation or he was not competent or authorised to operate. In the absence of any such findings, it was not appropriate for the lower Appellate Court to decree the suit. Reliance placed by the learned lower Appellate Court on another judgment of Hon'ble Supreme Court in case of **State of Haryana & Others Vs. Santra AIR 2000 (Supreme Court) 1888**, is misplaced in view of the subsequent 3-Judge Bench judgment of Hon'ble Supreme Court itself in **Shiv Ram (supra)**,



19. It is reiterated that mere failure of Sterilisation Operation would in itself does not entitle the plaintiff for compensation. The plaintiff had voluntarily undergone the operation. She has admitted Ex.D1, the writing on which the plaintiff has affixed her signatures; that she was undergoing the operation of her own free will and volition; that she understands the consequences of the operation; and that 5% of such-like operations fail. As such, plaintiff was not entitled to compensation. Similar view is expressed by a Co-ordinate Bench in case of **Suraj Mukhi (supra)**.

20. Thus, present appeal is **allowed**; and judgment and decree of the lower Appellate Court is set aside; and suit of the plaintiff is dismissed.

21. Pending application(s) if any also stand(s) disposed of.

15.07.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No