

STATE OF HARYANA AND ORS.

v.

RAJ RANI

AUGUST 29, 2005

[R.C. LAHOTI, CJ., G.P. MATHUR AND
P.K. BALASUBRAMANYAN, JJ.]

Torts—Medical negligence—Performance of sterilization operation by a surgeon employed by the State Government—Delivery of unwanted child—Claim petition for compensation from the State Government on the principle of vicarious liability—Held : In the absence of proof of negligence, the Surgeon cannot be held liable—The pregnancy could be for reasons de hors any negligence of the Surgeon—Consequently, State cannot be held vicariously liable to pay compensation to the victim—However, the compensation amount already paid by the State to the woman decree-holder not to be refunded.

The respondent, a women, had undergone a sterilization operation performed by a surgeon in the employment of the State of Haryana. However, the woman became pregnant and delivered a child. Suit was filed by her against the doctor claiming compensation from the State of Haryana on the principle of vicarious liability. The suit and the connected suits on the same issue have been decreed. Hence the present appeals.

Allowing the appeals, the Court

HELD : 1.1. A 3-Judge Bench of this Court has held in the case of *State of Punjab v. Shiv Ram & Ors.* that child birth in spite of a sterilization operation can occur due to negligence of the doctor in performance of the operation, or due to certain natural causes such a spontaneous recanalisation. The doctor can be held liable only in cases where the failure of the operation is attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognized the percentage of failure of the sterilization operation due to natural causes to be varying between 0.3.% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may

- A** reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognized by medical science. Thus, the pregnancy can be for reasons *de hors* any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable also would not arise. The decrees cannot, therefore, be upheld. [1029-B, C, D]

State of Punjab v. Shiv Ram & Ors. decided by the Supreme Court on August 25, 2005, relied on.

- C** 1.2. However amount, if any, paid by the appellant-State to the plaintiffs-decree holders shall not be liable to be refunded by way of restitution. [1029-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2743 of 2002.

- D** From the Judgment and Order dated 8.10.2001 of the Punjab and Haryana High Court in R.S.A. No. 4322 of 2000.

WITH

- E** C.A. Nos. 6417/2002, 5312, 6272/2003, C.A. Nos. 5316 and 1359 of 2005.

Ajay Siwach, T.V. George and Pardeep Dahiya, Ms. Jyotika Kalra, Bhaskar, Y. Kulkarni and Mrs. K. Sharda Devi for the appearing parties.

- F** The Judgment of the Court was delivered by

R.C. LAHOTI, CJ. : Leave granted in SLP (C) No. 3106/2004.

- G** In all these appeals, it is not necessary to notice the facts of individual cases. It would suffice to state that in all these cases, the plaintiff, a woman, had undergone a sterilization operation performed by a surgeon in the employment of the State of Haryana. Subsequent to the performance of the surgery, the woman became pregnant and delivered a child. Suit was filed against the doctor who had performed the surgery, claiming compensation based on the cause of action of 'unwanted pregnancy' and 'unwanted child', attributable to the failure of the surgery. State of Haryana was impleaded,
- H**

claiming decree against it on the principle of vicarious liability. The suits have been decreed and such decrees have been put in issue by filing these appeals by special leave. A

A 3-Judge Bench of this Court has held in *State of Punjab v. Shiv Ram & Ors.* (C.A. 5128 of 2002 decided on August 25, 2005) that child birth in spite of a sterilization operation can occur due to negligence of the doctor in performance of the operation, or due to certain natural causes such as spontaneous recanalisation. The doctor can be held liable only in cases where the failure of the operation is attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognized the percentage of failure of the sterilization operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognized by medical science. Thus, the pregnancy can be for reasons *de hors* any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable also would not arise. The decrees cannot, therefore, be upheld. B
C
D

However, the learned counsel for the appellant-State stated at the very outset that the plaintiffs in all these cases are poor persons and the State was not interested in depriving the decree-holders of the payment made in satisfaction of the decrees but the State was certainly interested in having the question of law settled. The stand taken by the appellant-State has been that in spite of the decrees under appeal having been set aside, any payment already made thereunder would be treated by the State as *ex gratia* payment. E
F

In view of the law laid down in *State of Punjab v. Shiv Ram & Ors.*, (supra) all these appeals are allowed. The judgments and decrees under appeals are set aside. All the suits filed by the plaintiffs-respondents are dismissed. There will be no order as to costs throughout. However, any amount paid by the appellant-State to the plaintiffs-decree holders shall not be liable to be refunded by way of restitution. G

S.K.S.

Appeals allowed. H