

2022 LiveLaw (SC) 781

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; J., SUDHANSHU DHULIA; J.
SEPTEMBER 06, 2022

CIVIL APPEAL NO. 6208/ 2022 (Arising out of SLP (C) NO. 1658 OF 2022)
CIVIL HOSPITAL & ORS. versus MANJIT SINGH & ANR.

Consumer Protection Act, 1986 - Medical Negligence - The cause of action for claiming compensation in cases of failed sterilization 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 sterilization 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. Referred to *State of Punjab Vs. Shiv Ram & Ors.*, (2005) 7 SCC 1

Consumer Protection Act, 1986; Section 2(1)(o) - Doctors and hospitals who render service without any charge whatsoever to every person availing of the service would not fall within the ambit of 'service' under Section 2(1)(o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such doctors and hospitals. Referred to *Indian Medical Association Vs. V.P. Shantha & Ors.*, (1995) 6 SCC 651.

(Arising out of impugned final judgment and order dated 16.01.2020 passed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 1597 of 2011)

For Appellant(s) Ms. Ranjeeta Rohatgi, AOR

For Respondent(s) Ms. Nupur Kumar, AOR Ms. Diksha Dadu, Adv. Ms. Asha Gopalan Nair, AOR

ORDER

Leave granted.

The challenge in the present appeal is to an Order passed by the National Consumer Disputes Redressal Commission (NCDRC) on 16th January 2020, whereby, the Revision filed by the respondent herein was allowed with direction to pay compensation as per the guidelines of the State to the respondent.

As per the facts on record, Ms. Baljinder Kaur, respondent No. 2 underwent tubectomy procedure on 23rd September, 1994 and 27th February, 1998. Both the procedures remained unsuccessful. The respondent gave birth to a male child in the year 2003. The respondent filed a complaint before the District Consumer Disputes Redressal Forum alleging medical negligence on account of failed tubectomy surgery. The same was dismissed on 20th January, 2005 on the ground that the respondent is not a consumer. The said order was affirmed in an appeal by the State Consumer Disputes Redressal Commission on 3rd February, 2011. The stand of the appellant is except nominal registration charges, no amount was to be charged from the present respondent.

It was in Revision, the NCDRC set aside the orders passed by the District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Commission and directed to pay compensation as per the guidelines and the policy of the State.

Learned Counsel for the appellant relies upon the Judgments of this Court reported as **Indian Medical Association Vs. V.P. Shantha & Ors., (1995) 6 SCC 651**, wherein, this court held that Doctors and hospitals who render service without any charge to every person availing of the service would not fall within the ambit of 'service' under Section 2(1)(o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such doctors and hospitals. It was held by this Court in V.P. Shantah's case as under:

“43. The other part of exclusionary clause relates to services rendered "free of charge". The medical practitioners, government hospitals /nursing homes and private hospitals /nursing homes (hereinafter called "doctors and hospitals") broadly fall in three categories:

- (i) where services are rendered free of charge to everybody availing of the said services.
- (ii) where charges are required to be paid by everybody availing of the said services.
- (iii) where charges are required to be paid by persons availing of services but certain categories of persons who cannot afford to pay are rendered service free of charges.

There is no difficulty in respect of the first two categories. Doctors and hospitals who render service without any charge whatsoever to every person availing of the service would not fall within the ambit of 'service' under Section 2(1)(o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such doctors and hospitals. So far as the second category is concerned, since the service is rendered on payment basis to all the persons, they would clearly fall within the ambit of Section 2(1) (o) of the Act. The third category of doctors and hospitals do provide free service to some of the patients belonging to the poor class but the bulk of the service is rendered to the patients on payment basis. The expenses incurred for providing free service are met out of the income from the service rendered by such doctors and hospital to paying patients undoubtedly falls within the ambit of Section 2(1)(o) of the Act.”

The reliance is placed on the judgment of this court reported as **State of Punjab Vs. Shiv Ram & Ors., (2005) 7 SCC 1** to contend that the failed tubectomy surgery is not a case of medical negligence as the sterilized 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. This Court held as under:-

“28. The methods of sterilization 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 sterilized 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.....

30. The cause of action for claiming compensation in cases of failed sterilization 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 sterilization 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.”

In view of the findings of this Court, the National Commission has erred in law in granting unspecified compensation to the respondent.

Accordingly, the present appeal is allowed. The order passed by the NCDRC is set aside. However, if any amount has been paid to the respondent in terms of the Order of the NCDRC, the same shall not be recovered by the appellant State.