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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****201****Date of decision: 08.04.2025****RSA-3889-2001(O&M)****The State of Haryana & Others****...Appellant(s)****Vs.****Ram Singh & Another****...Respondent(s)***********RSA-3890-2001(O&M)****The State of Haryana & Others****...Appellant(s)****Vs.****Smt. Sharda Rani & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Dushyant Saharan, AAG Haryana.****Mr. Rajwant Kaushish, Advocate
for the respondent.****Mr. Deep Inder Singh Walia, Advocate
for pro-forma respondent.***********NIDHI GUPTA, J.**

Present appeals have been filed by the State/ defendants No.1 to 3, against the judgment and decree dated 15.06.2001 passed by learned Additional District Judge, Kurukshetra whereby Civil Appeal No.349 of 1998 filed by plaintiff Ram Singh, and Civil Appeal No.78 of 2001 filed by plaintiff Sharda Rani against the dismissal of their suit by the Id. trial Court vide common judgment and decree dated 11.09.1997, have been allowed. Both the appeals are being disposed of by this common order as both



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appeals emanate from same incident; facts & issues involved in both the appeals are identical; as also these appeals are against common impugned judgment and decree dated 15.06.2001 whereby the appeals filed by the respondents/plaintiffs were allowed by the learned Additional District Judge.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants as the “defendants” and the respondent as “the plaintiff”. For the sake of convenience, the facts are being drawn from RSA-3889-2001 titled as “The State of Haryana & Others Vs. Ram Singh & Another”.

3. The plaintiffs Ram Singh and Sharda Rani are husband and wife. They had filed two separate suits being Civil Suit No.53 dated 06.05.1993 titled as “Ram Singh Vs. The State of Haryana & Others”; and Civil Suit No.356 dated 24.05.1990 titled as “Smt. Sharda Rani Vs. State of Haryana & Others” for recovery of Rs.2 lakh from the defendant State. Both the suits were consolidated by the learned trial court vide order dated 03.08.1992. It was the pleaded case of the plaintiffs that the marriage between the plaintiffs had taken place in the year 1977. By the year 1986, 4 children were born to the plaintiffs. Accordingly, the plaintiffs decided to go in for family planning operation. On 09.08.1986, plaintiff Ram Singh went to Primary Health Centre at Pehowa and got vasectomy operation done by defendant No.4 Dr. R.K. Goyal. A certificate bearing No.65/1 dated



09.08.1986 was issued to this effect. The plaintiffs were cautioned to abstain from intercourse for three months. It was the case of the plaintiffs that they had exercised due care and caution; and plaintiff had cohabited with his wife only after three months. However, Sharda Rani got pregnant. Then he went to the Civil Hospital and got himself checked and he was informed that the vasectomy operation had failed. Accordingly, they gave birth to their 5th child/4th daughter who was unwanted and unwelcome addition to their family. It was pleaded that the plaintiffs had undergone mental shock as well as immense physical torture due to the negligent act of the defendants. Accordingly, damages of Rs.2 lakh were sought.

4. The suit was resisted by the defendants by filing written statement and taking various objections, both formal and on merits.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 26.03.1990:-

“1) Whether the plaintiff is entitled to decree for mandatory injunction for recovery of damages as prayed in the plaint?OPP

2) Whether the suit is not maintainable in the present form?OPD

3) Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD

4) Whether the plaintiff has no, cause of action to file and maintain the present suit?OPD

5) Whether the suit is not properly valued for the purposes of court fee?OPD



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6) *Whether the plaintiff has not served notice under section 80 CPC?OPD*

7) *Relief."*

6. On the basis of evidence led by the parties, the learned trial Court had dismissed the suit of the plaintiffs vide common judgment and decree dated 11.09.1997. The appeals bearing No.349 dated 14.10.1997 titled as "Ram Singh Vs. The State of Haryana & Others"; and Civil Appeal No.78 dated 14.10.1997 titled as "Smt. Sharda Rani Vs. The State of Haryana & Others" were filed. Both the appeals were allowed by the learned lower Appellate Court vide judgment and decree dated 15.06.2001 in the following terms: *"...A decree for recovery of Rs. 1,00,000/- (Rupees one lac only) with interest at the rate of 6% per annum from the date of birth of the child, that is, 2.7.1988, till realisation of the decretal amount, is passed in favour of the plaintiffs Ram Singh and Smt. Sharda Rani, in equal shares, and against the respondents-defendants, jointly and severally..."*. Hence, present second appeal filed by the defendants-State.

7. It is submitted by learned counsel for the appellant-State that the learned Appellate Court erred in law in not appreciating Ex.DY in the true spirits in which it was clearly stated that after performing the operation, necessary precautions advised by the doctors have to be taken. Whereas plaintiffs did not care about precautions/instructions. As such, their suit was rightly dismissed by the learned trial Court. It is



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further submitted that the Appellate Court fell in grave error of law in not considering the basic fact that the population of India is increasing day by day. To stop the increasing trend of population the scheme i.e. Vasectomy Operation was included and in this particular scheme, plaintiff Ram Singh had offered his willingness which was subject to an undertaking that in the case operation failed the Defendant will not be responsible for the same. As such, no liability can be affixed upon the defendants. It is further submitted that the judgment and decree of the learned lower Appellate Court is based on conjectures and surmises without appreciating the oral and documentary evidence on record. It is accordingly prayed that the impugned judgment and decree be set aside. Learned State Counsel further relies upon judgments of Hon'ble Supreme Court in **"Civil Hospital & Others Vs. Manjit Singh & Another"** Law Finder Doc ID # 2038397; and **"State of Punjab Vs. Shiv Ram & Others"** Law Finder Doc ID # 84707.

8. Per contra, learned counsel for the respondents/plaintiffs vehemently opposes the prayer made on behalf of the appellant-State and argues that when a vasectomy operation fails, and the wife is impregnated, it stigmatises the wife and ostracises her from society. It is submitted that in a society like India, questions are raised regarding the character of the wife, as to how despite the vasectomy operation, she has become pregnant. It is submitted that in such a situation, the plaintiffs have faced great agony, however, the plaintiff-



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husband in the present case has exercised great tolerance in not throwing his wife Sharda Rani out of the house as in the land of India where Lord Ram despite the *agni pariksha* endured by Sita had made her leave the matrimonial home. It is submitted that therefore, the plaintiffs have undergone great mental hardship. Moreover, the judgments relied upon by the learned counsel for the appellants-State are distinguishable inasmuch as in the said cases, there was failure of tubectomy operation; which cannot be placed at par with the failure of vasectomy operation. It is submitted that it is for this reason that the appeals of the respondents/plaintiffs were allowed by the learned Additional District Judge, Kurukshetra and the judgment and decree dated 11.09.1997 passed by the learned trial Court was set aside, and the suit of the plaintiff was decreed with costs.

9. It is also submitted that only Rs.1 lakh has been awarded as damages and therefore, prays that the present appeal be dismissed.

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

11. I have heard learned counsel for the parties and perused the case file in great detail.

12. I have given my thoughtful consideration to the submissions made on behalf of learned counsel for the parties. I find



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merit in the submissions advanced on behalf of the appellant/defendant-State.

13. A perusal of the record reveals that in a move to control the fast-rising population of India, vasectomy operations were incentivised by the government by offering payment. DW1 Dr. Rajinder Kumar Goel, SMO CHC Narnaund has stated that in this background, an application Mark-A was received from plaintiff Ram Singh for undergoing vasectomy. As such, on 09.08.1986 while he was posted as SMO Pehowa, he operated on Ram Singh for family planning. For undergoing the operation/vasectomy, Ram Singh was paid money for which photocopy of receipt is Mark-C. His medical check-up is Mark-B. Ram Singh was categorically, instructed not to indulge in intercourse for next three months and was asked to use condom, and after three months to get a semen check-up. But Ram Singh did not exercise due care. DW1 further stated that he was a trained surgeon and had performed thousands of operations.

14. The record reveals that the plaintiffs have failed to produce any proof that there was no carelessness on their part and/or that they had complied with the aforesaid directions of the Doctor that is plaintiff Ram Singh had got his semen checkup done three months after the operation. Although, Ram Singh had stated that he had visited the Civil Hospital three months after the operation for his semen testing,



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however, there is no proof of the same. Upon repeated queries by this Court to learned counsel for the plaintiffs as to what is there to show that plaintiff Ram Singh had complied with direction of the doctor and had got his semen tested after three months, learned counsel for the plaintiffs has no reply. It is also not denied by learned counsel for the plaintiffs that prior to the operation, as per the certificate issued to the plaintiff, it was made clear that in case of failure of operation, there will be no liability upon the defendants. Another factor that requires consideration is that it has been stated by the plaintiffs that it was an unwanted pregnancy, however, there is no viable reason given as to why the said pregnancy was not terminated by Sharda Rani. Record reveals that it was pleaded by the plaintiffs that Sharda Rani was unable to terminate the pregnancy as she was weak. However, there is no evidence brought on record by the plaintiffs to prove the said contention. Even Sharda Rani never attempted to get the pregnancy removed. Admittedly, Sharda Rani was undergoing treatment of Dr. Sudha Gupta PW4 who has nowhere stated that Sharda Rani was weak. Said Sudha Gupta has also nowhere stated that Sharda Rani was not fit to undergo medical termination of pregnancy. Moreover, no negligence was proved on part of defendant No.4 Dr. R.K. Goel/DW1 as it is shown on record that he had performed thousands of vasectomy operations.



15. Further, I am not in agreement with the reasoning adopted by learned lower Appellate Court. Perusal of the impugned judgment and decree dated 15.06.2001 reveals that all of the above said factors have been ignored by the learned lower Appellate Court in decreeing the suit of the plaintiffs. Learned lower Appellate Court has only noted that the vasectomy operation was performed on 09.08.1986; and the 5th child was born on 02.07.1988 i.e. about 2 years after the operation; and that Dr. R.K. Goel has admitted that this vasectomy operation of Ram Singh/plaintiff was unsuccessful. No doubt, the said vasectomy of Ram Singh was unsuccessful however, learned lower Appellate Court ought to have considered the fact that it was not denied by the plaintiffs that Dr. R.K. Goel had performed thousands of such operations. The statistics reveal that chances of failure of vasectomy is rare with rates ranging from 0.3% to 9%. The plaintiffs fell in that rare bracket. This would not imply any negligence on part of defendant No.4. Learned lower Appellate Court has also not considered that prior to the operation, as per the certificate issued to the plaintiffs, it was made clear that in case of failure of operation, there was no liability upon the defendants.

16. Learned lower Appellate Court has relied upon judgment of the Hon'ble Supreme Court in "**State of Haryana Vs. Santara**" **2000 (5) SCC 182**, however, the said reliance is misconceived as the same has been distinguished by the Hon'ble Supreme Court in subsequent



three-Judge Bench judgment in **State of Punjab (supra)** wherein it is held that:-

“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) : IT 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



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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 sub-section (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."

25. And that provides, under the law, a valid and legal ground for termination of Pregnancy. If the woman has suffered an unwanted Pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.

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



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maintenance and upbringing of such a child cannot be claimed.”

17. Also, in **Civil Hospital (supra)** it has been held as under:-

“Consumer Protection Act, 1986, Section 2(1)(o) - Birth of male child despite tubectomy surgery - Medical negligence - Compensation as per guidelines and policy of State - Held, failed tubectomy surgery is not case of medical negligence as sterilized woman can become pregnant due to natural causes - Once woman misses menstrual cycle, it is expected of couple to visit doctor and seek medical advice - Therefore, order to pay compensation set aside.”

18. As regards the argument of learned counsel for the plaintiffs that stigma is cast upon the plaintiff Sharda Rani, the said argument is liable to be rejected as it has been recorded in Para 20 of the judgment of the learned trial Court dated 11.09.1997 as follows:-

“20. Report has been proved by Dr. Gupta who has appeared in the witness box as PW4. Then he got his semen checked which was done by Dr. Sudha Gupta. Certificates issued by her are Ex.P23 and Ex.P24 and then blood group of her daughter was examined and it was found that she was their daughter. Birth certificate of his daughter has been proved by PW3 which is Ex.P3. Then he went to Civil Hospital, Kurukshetra, where he was informed that operation had failed. O.P.D. slip is Ex.P25 which has been proved by PW6. His wife could not get the pregnancy terminated because she was weak. In this



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regard, she had visited Dr. Sarita Markand. O.P.D. slips are Ex.P26 and Ex.P27.”

From the above, it is proved that the daughter born after the vasectomy operation was born of the loins of plaintiff, Ram Singh.

19. In view of the above factual and legal position, the present second appeals are allowed. The judgment and decree dated 15.06.2001 passed by learned Additional District Judge, Kurukshetra in both appeals filed by the plaintiffs are set aside.

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

08.04.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No