

RAJASTHAN HIGH COURT

R. P. Sharma

Vs.

State of Rajasthan

Civil WritPetn. No. 3597 of 1988

(S.K. Keshote, J.)

05.10.2001

ORDER

S.K. Keshote, J.

1. This petition is directed by the petitioner under Article 226 of the Constitution and prayed for the following reliefs :-

- i)to direct the respondents to compensate the sudden and unnatural death of petitioner's wife Shrimati Kamla sharma by a sum of Rs. 3,04,000/-.
- ii)to direct the respondents that as a logical consequence of enquiry conducted under the orders of respondent No. 2, the functionaries responsible for utter negligence causing death of petitioner's wife be booked for appropriate action.

2. During the course of the arguments learned counsel for the petitioner gives up the prayer No. 2 aforesaid and confined the writ petition only to the extent of prayer No.1.

3. The facts of the case are that the petitioner's wife late Smt. Kamla Sharma was admitted in SMS Hospital, Jaipur on 23-2-1988 for the operation of the removal of gall stone. She was admitted in 3 AB ward under the supervision of Dr. P.C. Kala. The petitioner's wife was shifted to 6, South Cubical Unit on 27-2-1988. She was operated upon for removal of gall stone on 7-3-1988. The medical staff working under the operating surgeon was advised for giving blood transfusion of blood group O + ive to the wife of the petitioner.

4. One bottle blood of blood group O +ive was obtained from the blood bank of the

hospital and it was transfused to her body. The petitioner's wife need more blood, another bottle was obtained from the blood bank of the hospital personally by Dr. Indu from Dr. Madhu who handed over the bottle of blood group. This bottle of blood was obtained at 9.00 P.M. on 7-3-1988. This bottle of blood was obtained by Dr. Indu was transfused to the body of late Smt. Kamla Sharma by a nurse at 11.00 P.M. After 10 minutes of transfusion of blood from the second bottle obtained from the Blood Bank, the condition of the petitioner's wife deteriorated and became serious. The matter was reported to Dr. Indu by the petitioner's daughter Smt. Shashi but no serious attention was paid to the report of Smt. Sashi and the matter was dealt with utter negligence.

5. After about 25 minutes of transfusion of blood to the body of petitioner's wife Dr. Indu received a telephonic call from the blood bank that the transfusion of the blood to the body of patient be immediately stopped by removing the bottle from hook. The daughter of the petitioner asked the nurse on duty as to why the transfusion of blood is stopped but no reply was forthcoming. Afterwards the daughter of the petitioner came to know the cause of stopping blood transfusion. She learnt that the bottle of the blood supplied for transfusion was of blood group B + ive.

6. On 8-3-1988 the condition of the petitioner's wife became serious and in the morning the patient was put to oxygen and the treatment continued.

7. On 8-3-1988 itself at about 10.30 P.M. the petitioner's wife lost her eyesight. She breathed her last at about 4.00 P.M. on 9-3-1988.

8. The cause of her death as shown in the death certificate issued on 9-3-1988 is 'Cardio respiratory arrest'.

9. It is submitted that as per the medical jurisprudence one of the cause of the death due to Cardio respiratory arrest is transfusion of blood of wrong blood group. This matter of utter negligence on the part of the Doctors was highlighted in Hindi Daily Newspaper Rastradot in its edition on 12-3-1988.

10. The hospital administration held an enquiry into the incident of the death of the petitioner's wife.

11. On 16-3-1988 there was demand of action against the negligent doctors in the

Rajasthan Legislative Assembly. Preliminary enquiry was conducted by Dr. P.K. Wanchoo and Dr. F.S.K. Barar. The Committee held Dr. Madhu and Dr. Indu responsible for the death of the petitioner's wife. This what is reported in Hindi Daily Newspaper Rastradot on 17-3-1988. The petitioner was called twice to attend the aforesaid enquiry in the chamber of Dr. F.S.K. Barar. He attended the enquiry along with his daughter Smt. Sashi. They both stated the fact before the Enquiry Committee about the transfusion of second bottle of blood, deterioration of the condition of the patient after about 10 minutes of transfusion, negligent behaviour of the doctors on duty and then abrupt dis- continuation of blood transfusion after about 25 minutes and there was telephonic call from the Blood Bank.

12. The petitioner wrote a letter on 12-4-1988 to respondent No. 2 asking for the information about blood group of petitioner's wife, dates and time, bottle number and blood group supplied for the patient from the blood bank. In response to the aforesaid letter the petitioner was supplied the required information by the respondent No.2 vide letter dated 19-4-1988.

13. It is submitted that the respondent No. 2 admitted that the one blood bottle for the patient was wrongly supplied. In the final report of the enquiry submitted to the respondent No. 2 it has been established beyond doubt that the death of the petitioner's wife occurred due to transfusion of wrong group of blood to the patient.

14. It is stated that the petitioner's wife was only 45 years of age with excellent condition of general health. The hereditary span of life of the members of the family is 70 years as her father expired at the age of 70 years. It is submitted she had to discharge the liability of her younger daughters' marriage who is of 19 years. She belongs to the status of medium class well-to-do family. The petitioner being the husband has to suffer mental agony all along in her memory as he feels himself helpless and isolated at the age of 56 years when the company of wife is all the more needed. The petitioner has to suffer mental agony, isolation and separation from wife for a period of 25 years of his life at the age when the company of wife is more needed. It is stated that loss of company of wife cannot be compensated by the amount less than Rs. 2 lacs. Lack of advise and giving adequate co-operation in discharge of the liabilities of the marriage of the daughter cannot be compensated by an amount less than Rs. one lac and there were medical expenses of Rs. 4,000/- incurred in operation and treatment, thus the petitioner claimed Rs. 3,04,000/- as compensation

for the negligence on the part of the doctors in the case.

15. Before approaching to this Court the petitioner served a notice for demand of justice to the respondents but when nothing has been done he filed this petition.

16. The petition has been admitted. Reply to the petition has been filed by respondent Nos. 1 and 2 through the officer-in-charge Dr. F.S.K. Barar. The respondent Nos. 3 and 4 have not cared, bothered to file reply to the writ petition as well as to remain personally present or through the advocate to make the oral submissions.

17. Along with the reply to the petition, the respondent Nos. 1 and 2 submitted copy of enquiry report into the death case of Smt. Kamla Sharma dated 13-5-1988. In the reply it is admitted by the respondents that the wife of the petitioner expired in the hospital during post-operative care due to transfusion of blood of a wrong group. It is stated that high power committee consisting of two senior doctors, Dr. P.K. Wanchoo and Dr. F.S.K. Barar were appointed to conduct the elaborate enquiry. The enquiry was conducted and the enquiry report was submitted to the Government for further action. It is stated in the reply that the Enquiry Committee came to the conclusion that the in-charge of blood bank Dr. Madhu Chaturvedi who supplied the bottle and in ward Dr. Indu Sharma who transfused the blood were responsible for her death because of the lapses on their part. It is stated that the enquiry report (is) under consideration of the Government.

18. In para No. 24 of the reply the preliminary objection raised that the determination of the compensation and the damage is beyond the jurisdiction of this Court under Article 226 of the Constitution. The facts are disputed and can only be determined by regular enquiry or trial by a civil Court. The writ is not a substitute for civil dispute. It is stated that the amount of compensation claimed is also without any basis and documents. It is submitted that no proof has been furnished in the form of expenses how the petitioner has made so heavy expenses.

19. Heard the learned counsel for the parties.

20. Learned counsel for the petitioner contended that the State of Rajasthan is liable for the negligence of its doctors. It is submitted that the death of the wife of the

petitioner was caused due to the negligence of two doctors of the State of Rajasthan. Their negligence has been accepted. It is also accepted by the respondent-State of Rajasthan that cause of death of wife of petitioner is transfusion of wrong blood group. This transfusion of blood of wrong group is as a result of negligence of respondent No.3 and 4 (Doctors).

21. Learned counsel for the petitioner next contended that the State of Rajasthan has not acted fairly, reasonably and as a welfare State. Despite of the fact that it accepted it to be a case of death of the wife of the petitioner as a result of negligence of the doctors, officers of the Government, it voluntarily has not given any compensation to the petitioner. Not only this the petitioner has given a notice for demand of justice to the respondents before coming to this Court but they have not cared to acknowledge the same what to say to accept the claim of the petitioner.

22. Lastly it is contended that the loss of the wife to the petitioner at this stage cannot be compensated in terms of money but the petitioner has made a claim of a moderate amount. This amount should have been paid by the State of Rajasthan to the petitioner rather than to compel him to approach to this Court.

23. Mr. R.N. Mathur, learned Additional Advocate General on the other hand very fairly submitted that the State of Rajasthan is vicariously liable for this negligence of its doctors as a result of which the petitioner has lost his wife. Mr. Mathur, however, submitted that it is the negligence of the doctors for which the State is vicariously liable but as they are parties to this petition, this amount of the compensation claimed by the petitioner be ordered to be paid by them. Lastly it is contended that if ultimately the Court directs the State of Rajasthan to pay the amount of compensation to the petitioner for the loss of his wife as a result of negligence of the doctors, a reasonable sum may be awarded.

24. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

25. I do not find any substance, merits and reasonableness in this approach of the Additional Advocate General of the State that this Court to order for the payment of this amount of compensation claimed by the petitioner against those two doctors because of their negligence in discharge of their duties, the petitioner lost his wife. It

is a vicarious liability of the State of Rajasthan and the Court on proof of the negligence of its officers which result in causing the loss of his wife to the petitioner certainly can direct the State of Rajasthan and award the compensation against it. For the negligence of its officers in performing their duties if any loss is suffered by a citizen certainly the Court can award compensation in his favour and direct the State of Rajasthan to pay the same. Where the officers of the State discharge their duties negligently and carelessly which result in the loss of the wife to the petitioner, the State to bear the consequences. However, the State can recover the amount of compensation awarded and paid by it to the petitioner for the loss of his wife from those negligent and careless officers.

26. The respondent Nos. 1 and 2 have not disputed that the death of the wife of the petitioner was as a result of the negligence and carelessness in performance of their duties by the two doctors, the servant of the State of Rajasthan. In view of this undisputed fact the Court need not to go on and considers this aspect of the matter. Otherwise also from the report of the Committee it is clear that the cause of the death of the wife of the petitioner was mismatched blood transfusion. The Committee has further reported that the onus of responsibility lies on Dr. Madhu Chaturvedi, resident Blood Bank who allowed a wrong bottle of blood to leave the blood bank. The last share of the blame has also been reported to rest on Dr. Indu Sharma. The relevant portion of this report reads as under :-

1.The cause of death of Mrs. Kamla Sharma was clearly a mismatched blood transfusion.

2.The onus of responsibility lies on Dr. Madhu Chaturvedi, Resident, Blood Bank who allowed a wrong bottle of blood to leave the Blood Bank. The fact that Dr. Indu Sharma promised to carry out the verification before starting the transfusion, does not absolve Dr. Madhu Chaturvedi of her stipulated responsibility, as she was primarily responsible for supplying the correct bottle of blood.

3.A large number of the blame also rests on Dr. Indu Sharma, Resident, Surgical Unit III because of the following reasons :-

(i)She hurriedly took the bottle of blood from the Blood Bank without allowing Dr. Madhu Chaturvedi to complete her verification.

(ii)Dr. Indu Sharma verified the patient's name and Registration No. and failed to verify the blood group mentioned on the bottle with the patient's blood group on the tag, as is explicitly mentioned at item No. 3 on the cyclostyled lable on

the bottle of blood.

(iii) Dr. Indu Sharma was not physically present in the ward at the time of starting the blood transfusion, which was in fact started by the Nurse on duty.

(iv) When she (Dr. Indu Sharma) was summoned to the Ward, she failed to discharge the basic courtesy which is expected of a doctor when dealing with the attendance of a serious patient.

4. The behaviour of the Nurse on duty with the patient's relative (daughter) was also far from proper.

27. So it is a clear case of the negligence of the servants of the State of Rajasthan in performance of their duties as a result of which the death of the wife of the petitioner occurred.

28. The respondent-State of Rajasthan has not given out what action has been taken by it against these two doctors as well as the nursing staff against whom the Committee has reported that her behaviour with the patient's relative was far from proper. In a case of this nature it is expected from the State to take immediate action against the negligent and careless servants. For the reasons best known to it no such action appears to have been taken against those doctors and nursing staff. That may be the one of the reasons that among the Government servants the graph of the negligence and carelessness in discharge of their duties is increasing day by day.

29. Life of a person is precious and if it is lost because of the negligence and carelessness of the Government servant it is a very serious matter. For the loss of the life of a person his/her dear and near cannot be compensated in terms of money. It is true that the Additional Advocate General disputed the amount of the compensation claimed by the petitioner but he has not come up with any figure of amount to be awarded as compensation by the Court to the petitioner.

30. In fact after this report of the Doctors Committee the State Government voluntarily should have paid the compensation to the petitioner. This has not been done. It is really a serious and shocking that the welfare State has instead of voluntarily giving the compensation to the petitioner for the loss of his wife as a result of negligence in discharge of the duties on the part of its servant, it is opposing this writ petition on the point of the quantum of the compensation. It should have been done at the stage when the petitioner has given notice for demand of justice. The State Government should

have come up with the reasonable sum to be awarded as compensation to the petitioner for the loss of his wife. That stage also nobody has taken care of the matter.

31. This writ petition is filed in the year 1988 but till day nobody has cared from the State of Rajasthan to give a single pie towards the compensation to the petitioner.

32. In the matter of the award of compensation for the loss of the wife of the petitioner it is very difficult to reach to a definite sum of the money. The reason is very obvious. The wife for the husband is very precious and her value in money terms is very difficult to assess and fix.

33. Where the matter is considered and looked into from this aspect certainly the amount claimed by the petitioner of the compensation under three heads do not seem to be unreasonable, unfair and towards the upward side. The loss of the wife to the husband at this age is certainly a loss which cannot be compensated in terms of the money by the Court. But it is only a matter of consoling for suffering, agony and loss of company etc.

34. The petitioner has claimed Rs. two lacs under the head of loss of the company of wife. Rs. One lac has been claimed by the petitioner under the head for lack of advice and giving adequate co-operation in discharge of the liabilities of the marriage of the daughter and under the head of medical expenses he has claimed Rs. 4,000/-.

35. In the reply to the petition the respondents have stated that the petitioner has not given out any basis for this amount claimed as compensation. How any base can be there for this loss to which the petitioner is suffering till day. It is only a matter of rough estimate for consoling and not the claim for the real loss.

36. It is to be stated at the cost of repetition that real loss to which the petitioner is subjected and suffered cannot be compensated in terms of the money. When the respondents have not given out any figure of the sum which is to be awarded to the petitioner as compensation for the loss of his wife the claim made by the petitioner is to be accepted.

37. In the result this petition succeeds and the same is allowed. The respondent- State of Rajasthan is directed to pay Rs. 3,04,000/- to the petitioner as compensation for the

loss of his wife due to the negligence in performance of duties by its servants.

38. The respondent-State of Rajasthan is further directed to pay the interest on this amount to the petitioner at the rate of 12% per annum from the date of the filing of this petition i.e. 4-10-1988 till the date of the payment thereof.

39. The respondent-State of Rajasthan is further directed to pay Rs. 2,000/- as cost of this petition to the petitioner.

40. The State of Rajasthan is directed to calculate the amount of interest payable to the petitioner on this amount of the compensation within a period of one month from the date of receipt of the certified copy of this order. The amount of compensation, the amount of interest calculated thereon and the amount of cost is to be paid to the petitioner by the respondent-State of Rajasthan within one month.

41. The State of Rajasthan is free to recover this amount from those doctors, because of their negligence the petitioner has lost his wife. The compliance of this order is to be reported to the Court.

Petition allowed.