RAJASTHAN HIGH COURT

Sobhag Mal Jain

Vs.

State of Rajasthan

S.B. Civil Writ Petition No. 5802 of 1992
(Shiv Kumar Sharma, J.)

26.10.2005

JUDGMENT

Shiv Kumar Sharma, J.

1. The question for consideration in the instant writ petition relates to the quantum of compensation to be paid to the husband of the deceased housewife, whose death is attributed to medical negligence.

2. Contextual fact depicts that the petitioner got his pRegulation nt wife Kanno @ Kanta Devi admitted in the *Govt. Hospital Sawai Madhopur* who gave birth to twins but excessive bleeding after delivery could not be controlled on account of negligence of the doctors and she died. The Director Medical and Health Services, Govt. of Rajasthan, Jaipur directed the Deputy Director Medical and Health Services J*aipur* to conduct inquiry in the matter. The Deputy Director after recording the statements of doctors, nurses and the other staff deputed in the Hospital opined in the report that the wife of the petitioner died on account of negligence of Dr. P.C. Jain and Dr. Pushpa Gupta, who after repeated requests did not attend the patient. The operative part of the report reads as under:

> Jherh dkUrk ds ifr }kjk Mk-ih-lh- tSu dks ckj&ckj vkxzg djus ds i'pkr~ ij fd ,d ckn mudh iRuh dks ns[k fy;k tkosA MkW- ih-lh- tSu }kjk rqjUr dk;Zokgh fd;k tkuk izfrr ugha gksrk gSA tkap esa ;g Hkh ik;k x;k fd MkW- iq"ik xqIrk us Hkh e`rd ds ifr ds }kjk ckj&ckj dgs tkus ds mijkUr Hkh mldh foLr`r ns[kHkky ugh dhA 'kq: esa ,d&nks ckj e`rd ds ifr ds dgus ij os ejhtksa ds ikl xbZ rks ij ,slk yxrk gS fd mldh ;wVjl] ch]ih] ,.M CyhfMax vkfn ij fo'ks"k xkSj ugha fd;k x;k tcfd fMysojh twin delivery

gksus rFkk ejht ds ,susfed gksus ds dkj.k Brik treatment dh rqjUr vko';drk FkhA
tkap ds mijkUr ftyk/kh'k egksn; ls lEidZ dj muls lkjh fLFkrh dk;Zokgh ls voxr djk;k x;kA Jherh voEek o lkslEek Fkksel nksuksa LVkQ ulksZ ds LFkkukUrj.k ckgj djus dh ,oa MkW- iq"ik xqIrk o MkW-ih-lh- tSu nksuks dks fczDl VkbZeyh vVsa'ku Brik timely attention u nsus dkj.k ysVj vkWQ fMlIystj Letter of displeasure nsus gsrq gekjs lkFk&lkFk ftyk/kh'k egksn; us viuh lgefr izdV dhA izkFkfed tkap izfrosnu izLrqr gSA

On the FIR submitted by the petitioner, the police gave final report. The Chief Judicial Magistrate *Sawai Madhopur* vide its order dated August 08, 1984 held that for taking cognizance against Dr. P.C. Jain and Dr. Pushpa Gupta prior sanction under Section 197 of the State Government was necessary, therefore, necessary sanction was sought but the State Government vide its communication dated Feb. 22, 1986 refused to grant sanction for prosecution of Dr. Prem Chard Jain and Dr. Pushpa Gupta. Against the communication dated Feb. 22, 1986 the petitioner filed a writ petition before this Hon'ble Court. The said writ petition was registered as D.B. Civil Writ Petition No. 418/1987. The Division Bench of this Court vide its judgment dated October 12, 1990 allowed the writ petition and directed the State Government to pass fresh speaking order after hearing both the parties. The State Government vide a detailed speaking order dated November 14, 1991 refused to grant sanction for prosecution of the aforesaid doctors. On January 22, 1992, after passing of the orders by the State Government, the petitioner through his advocate sent a notice by registered post to reconsider the matter. Thereafter instant writ petition has been filed by the petitioner (husband of deceased Kanno) for awarding compensation and prosecution of the doctors.

3. The respondents 1 and 2 filed a reply to the writ petition. In regard to the report of Director Medical and Health Services it has been averred that death was not caused by the negligence of the doctors. The allegation of the petitioner that the respondents 3 and 4 prevailed upon the high officials of respondent No. 1 was denied and it has been stated that the matter of sanction for prosecution was processed from the lowest to the highest level and after considering all the relevant record, the State Government decided not to accord sanction for prosecution. The delivery of children was quite normal and the patient and the children had responded the treatment very well but

later on there was bleeding which could not be pleaded that if the requisite blood was not available in *Sawai Madhopur* General Hospital, the treating doctors could not be said to be negligent in performing their duties. The authorities did not find any negligence or fault on the part of the doctors or the para medical staff. It has also been stated that the writ petition is not maintainable as the High Court cannot sit in appeal over the order of refusing sanction for launching prosecution. The writ petition is not maintainable as the petitioner has raised disputed questions of fact.

4. I have heard the rival submissions and scanned the material on record. Learned counsel for the petitioner restricted his submissions to the relief of compensation only.

5. Relevant considerations in regard to subject of negligence in the context of medical profession are found mentioned by Michael A. Jones in his book "Medical Negligence", published in 1991. At page 113 it has been indicated thus:

> "A doctor who fails to attend his patient or who is dilatory in attending may be guilty of negligence if a reasonable doctor would have appreciated that his attendance was necessary in his patient's interest. But this will depend upon the precise circumstances of the case; how serious was the patient's condition; what was the doctor told; what commitments to other patients did he have at the time?...."

At page 149 it has been observed that:

> "A doctor has duty to monitor the treatment given to the patient, particularly where the treatment carries high risk of an adverse reaction. This duty obviously extends to post operative conditions which the patient may develop."

6. In *R. v. Bateman,* [1] Lord Hewart, C.J. said:

> "If a person holds himself out as possessing special skill and knowledge and he is consulted as possessing such skill and knowledge, by or on behalf of a patient he owes a duty to the patient to use due caution in undertaking the treatment. If he accepts the responsibility and undertakes the treatment and the patient submits to his direction and treatment accordingly, he owes a duty to the patient to use diligence, care, knowledge, skill and caution in administering the

treatment."

7. It is trite that an employer is vicariously liable for torts committed by his employees acting in the course of their employment. In *Cassidy v. Ministry of Health,* [2] Denning, LJ observed thus:

> "In my opinion authorities who run a hospital, be they local authorities, government boards or any other corporation, are in law under the selfsame duty as the humblest doctor, whenever they accept a patient for treatment they must use reasonable care and skill to cure him of his ailment. The hospital authorities cannot, of course, do it by themselves; they have no ears to listen through the stethoscope, and no hands to hold the surgeon's knife. They must do it by the staff they employ; and if their staff are negligent in giving the treatment, they are just as liable for that negligence as is anyone else who employs others to do his duties for him."

8. It is thus evident that a doctor who fails to attend his patient or who is dilatory in attending the patient is guilty of negligence and the authority who employed the doctor is vicariously liable for torts committed by the doctor. From the report of Dy. Director incorporated in Para 2 of the order apparently Dr. P.C. Jain and Dr. Pushpa Gupta were found negligent since they were dilatory in attending the wife of the petitioner. I find myself unable to agree with the reply submitted by the respondents and hold Dr. P.C. Jain and Dr. Pushpa Gupta negligence on the basis of the aforesaid report of Dy. Director. I also hold the State Government vicariously liable for the negligent acts of Dr. P.C. Jain and Dr. Pushpa Gupta.

9. The jurisdiction of courts to indemnify a citizen for injury suffered due to medical negligence is founded on the principle that "an award of exemplary damages can serve a useful purpose in vindicating the strength of law." An ordinary citizen is hardly equipped to match the night of the state. That is provided by the rule of law. Public functionary if he acts negligently, the negligent behavior loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. The award of compensation for harassment by public authorities not only compensates the individual but helps in curing social evil.

10. The word 'compensation' according to dictionary, means, 'compensating or being compensated; thing given in recompense.' In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. It is not well settled that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary and negligent behavior of its employees.

11. Their Lordships of the Supreme Court in *Common Cause v. Union of India,* [3] even issued guidelines about working of ministers and indicated that a Minister, the executive head of the State, is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. Their Lordships observed in Para 26 of the judgment thus:

> "It is high time that the public servants should be held personally responsible for their *mala fide* acts in the discharge of their functions as public servants. The Supreme Court in Lucknow Development Authority case approved "Misfeasance in public offices" as a part of the law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrong doing. With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. If a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of *mala fide* but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary."

(Emphasis Supplied)

12. That takes me to the quantum of compensation. In deciding the quantum of compensation their Lordships of the Supreme Court consistently applied the multiplier method in the cases arising out of motor vehicle Act. In Lata *Wadhwa v. State of Bihar,* [4] three Judge Bench of Hon'ble Supreme Court nominated Hon'ble Justice Y.V. Chandrachud (Former Chief Justice of India) to determine the compensation to be paid to the legal heirs of the deceased who died on March 3, 1989 in Tata Iron and Steel

Company premises where devastating fire engulfed and 60 persons had died. The Hon'ble Justice Y.V. Chandrachud gave report in two parts, Part I dealt with the case of death and part II with cases of burn injuries. In determining the compensation the principles indicated by Andhra Pradesh High Court in *ASRTC v. Satiya Khatoon,* [5] *Bhagwan Das v. Mohd. Arif,* [6] and *APSRTC v. G. Ramanaiya,* [7] were analysed. Report of British Law Commission was extracted which indicated that "the multiplier has been, remains and should continue to remain, the ordinary, the best and only method of assessing the value of a number of future annual sums." Hon'ble Justice Y.V. Chandrachud also considered the income of the husbands of those housewives, who were employees of the company and then on that basis, has tried to determine the loss on the death of the wife and after applying multiplier determined the total amount of compensation had been arrived at.

13. Case of *General Manager ASRTC Trivandrum v. Susamma Thomas* [9] exhaustively dealt with the question for assessment of damages to compensate the dependents. On the acceptability of the multiplier method of the Apex Court observed thus:

> "The multiplier method is logically sound and legally well established method of ensuring a just compensation which will make for uniformity and certainty of the award. A departure from this method can only be justified in rare and extraordinary circumstances and every exceptional cases."

14. Issue in regard to quantum of compensation in the matter of deceased housewives was dealt with by the Hon'ble Supreme Court in *Lata Wadhwa v. State of Bihar* (supra), thus : (Para 10)

> "So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied but the estimation of the value of services rendered to the house by the housewives, which arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given dates for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the

absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs. 36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000/- instead of Rs. 25,000/- given under the report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000/- per annum and multiplier applied is eight. Though, the multiplier is correct, but the value of services rendered at Rs. 10,000,- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs. 20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs. 50,000/- towards the conventional figure."

15. Bearing in mind the principles laid down in Lata Wadhwa (supra) I now proceed to analyze the instant matter. Even on a close scrutiny, I could not notice as to what was the age of Kanno @ Kanta Devi at the time of her death. However, the age of petitioner appears to be 35 years at the time of death of his wife. Therefore, a presumption may be drawn that age of petitioner's wife at the time of her death was between 30 to 35 years. In order to apply multiplier method for calculating compensation it is necessary to take assistance of Second Schedule appended to Motor Vehicles Act, 1988 which provides that if the age of victim is above 30 years but not exceeding 35 years the compensation may be calculated by applying the multiplier of 17. As already noticed in *Lata Wadhwa v. State of Bihar* (supra), their Lordships of the Supreme Court indicated that taking into consideration the multifarious services rendered by the housewives for managing the entire family even on a modest estimation the value should be estimated as Rs. 3,000/- per month and Rs. 36,000/- per annum. Therefore, by applying the multiplier of 17 in the instant matter I calculate the compensation thus:-

(i) 3,000 x 12 x 17 = 6,12,000/-
(ii) In the facts and circumstances of the case instead of interest I deem it

appropriate to grant conventional amount to the petitioner in the sum of Rs. 50,000/-.

Total : 6,12,000/- + 50,000/- = Rs. 6,62,000/-.

16. For these reasons, I dispose of the writ petition in following terms :

(i) The petitioner shall be paid compensation in the sum of Rs. 6,62,000/- by the State Government within thirty days from the date of receipt of this order.

(ii) If the amount is not paid within thirty days, the petitioner shall be entitled to recover interest at the rate of 12% per annum.

(iii) The State Government may recover the said amount from the negligent doctors, who are respondents in the writ petition.

(iv) The petitioner shall also be entitled to cost which is quantified as Rs. 5,000/-.

Order accordingly.

Cases Referred.

1. (1925) 94 LJKB 791
2. (1951) 2 KB 343
3. (1996) 6 SCC 530
4. AIR 2001 SC 3218
5. (1985 ACJ 212)
6. (1987 ACJ 1052)
7. (1988 ACJ 223)
8. (1994) 2 SCC 176
9. (1994) 2 SCC 176