

CASE NO.:
Appeal (civil) 2743 of 2002

PETITIONER:
State of Haryana & Ors.

RESPONDENT:
Raj Rani

DATE OF JUDGMENT: 29/08/2005

BENCH:
CJI R.C. Lahoti, G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
With

C.A. No. 1359 of 2005
C.A. No. 5316 of 2005 (@ SLP (c) No. 3106/2004)
C.A. No. 5312 of 2003
C.A. No. 6272 of 2003
C.A. No. 6417 of 2002

R.C. Lahoti, CJI

Leave granted in SLP (C) No. 3106/2004.

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, 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 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.

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.

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.