



RSA No. 2261 of 1998

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2261 of 1998 (O&M)

Reserved on: 11.09.2025

Pronounced on: 26.09.2025

Satya Devi

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sanjay Majithia, Sr. Advocate with
Mr. Sumit Sinha, Advocate
for the appellant.

Mr. Kaurmesh Kaushal, AAG Punjab.

DEEPAK GUPTA, J.

The plaintiffs have preferred the present regular second appeal challenging the concurrent findings of the Courts below, whereby their suit for recovery of ₹2,40,000/- as damages, filed in forma pauperis, was dismissed by the trial Court on 06.12.1993, and the appeal there against met the same fate before the First Appellate Court on 28.04.1997.

2. Plaintiff Satya Devi was married to Hazara Ram in 1974 and five children (plaintiffs No. 2 to 6) were born from the wedlock. Pursuant to the State of Punjab's family planning programme, Hazara Ram underwent sterilization on 21.02.1985. However, the operation allegedly failed as Satya Devi conceived and delivered a female child on 06.02.1986, who unfortunately expired on 05.04.1986. Thereafter, Satya Devi herself underwent sterilization on 21.01.1987, but that too failed, resulting in the birth of plaintiff No. 6, Manjit Devi, on 09.12.1987. Tragically, the child was born 100% physically deformed. On these averments, the plaintiffs claimed compensation of ₹2,40,000/- under various heads, alleging the failure of sterilization operation due to negligence of operating surgeon.

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3. The defendants—State contested the claim, asserting that the plaintiffs had failed to follow the post-operative instructions and guidelines. It was further pleaded that sterilization has a known failure rate of 2–4 per 1000 cases and that proper care had been taken during the procedure. They also submitted that, in case of conception after sterilization, facilities for free medical termination of pregnancy were available, which the plaintiffs chose not to avail.

4. The trial Court, after framing issues and appreciating evidence, held that there was no negligence on the part of the operating surgeon, and the failure could only be attributed to the known margin of error in such operations. The suit was accordingly dismissed. The First Appellate Court affirmed these findings.

5. In assailing these concurrent findings, learned Senior Counsel for the appellants argued that sterilization camps, conducted by the Government to control population growth, involve hundreds of operations performed in haste, often compromising due care, which amounts to negligence. It was further contended that no evidence exists on record to show that adequate instructions or education regarding precautions and facilities for termination of pregnancy were ever provided to the appellants. The counsel argued that medical termination of pregnancy cannot be thrust upon an unwilling couple, who had already undergone sterilization, and that the birth of a deformed child as a result of a failed operation entitles the appellants to compensation. Reliance was placed upon *Smt. Shobha v. Govt. NCT of Delhi*[Delhi HC] 2004(2) RCR (Civil) 91;*Fulla Devi @ Fullo Devi v. State of Haryana* 2004(1) PLR 391 [P&H HC], and *Tmt. Dhanam v. Secretary to Government, Health and Family Welfare Department & Ors.* (Madras HC), Law Finder Doc Id # 1954539).

6. Per contra, learned State counsel argued that sterilization failures, though rare, are statistically possible, and the birth of a deformed child cannot *ipso facto* establish negligence on the part of the operating

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surgeon. It was contended that the appellants ought to have availed the facility of medical termination once pregnancy occurred despite sterilization. Reliance was placed upon *State of Haryana v. Raj Rani 2005(4) RCR (Crl.) 175 [SC]*; *State of Haryana & Ors. v. Samsun Nisha 2014(3) PLR 443[P&H HC]*,, *Balwinder Kaur v. State of Haryana & Anr. 2009(2) RCR (Crl.) 104[P&H HC]*; *State of Haryana v. Amrawati 2008(3) RCR (Civil) 87[P&H HC]*; *State of Haryana & Ors. v. Ram Singh, RSA No. 3889 of 2001 decided on 08.04.2025 by P&H HC*; and *State of Punjab v. Shiv Ram 2005(4) RCR (Crl.) 92 [SC]*

7. This Court has carefully considered the rival submissions and perused the record.

8. It stands admitted that Satya Devi underwent sterilization on 21.01.1987 at Primary Health Centre, Bhunga, yet gave birth to a deformed child, Manjit Devi, on 09.12.1987. Satya Devi deposed that she opted for sterilization to avoid enlargement of the family and that the birth of Manjit Devi was a severe blow, both emotionally and financially, as she had to divert all her time and resources to the care of the handicapped child, adversely affecting the other children as well. However, as rightly noticed by the trial Court, there is not a single word in her testimony attributing the failure of sterilization specifically to negligence on the part of the operating surgeon.

9. On the contrary, DW-1 Dr. R. P. Mehangi, who conducted the operation, deposed that he exercised due care and caution and informed the patient about the possibility of a 2–4 per 1000 failure rate, to which Satya Devi consented.

10. The pivotal question, therefore, is whether the mere failure of sterilization, resulting in the birth of a deformed child, without any cogent evidence of negligence by the operating surgeon, can justify presumption of negligence and entitle the plaintiffs to compensation.

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11. The issue raised in the present case is no longer res integra.

12.1 A three-Judge Bench of the Hon'ble Supreme Court in ***State of Punjab v. Shiv Ram (supra)*** dealt with an identical situation. In that case, despite sterilization, the plaintiff delivered a child and sought damages on the ground of negligence. The Court held that the mere fact of pregnancy and childbirth following a sterilization procedure does not by itself establish negligence or liability on the part of the operating surgeon or the State. Compensation can be awarded only if negligence in performing the surgery is specifically pleaded and proved.

12.2 Relying on ***Jacob Mathew v. State of Punjab (2005) 6 SCC 1***, Hon'ble Supreme Court reiterated the principles of medical negligence and adopted the **Bolam test**, emphasizing that:

- Negligence requires proof of duty, breach, and resulting damage.
- An error of judgment or accident does not automatically amount to negligence.
- A medical professional is liable only if he lacked the requisite skill or failed to exercise reasonable competence expected of an ordinary practitioner in that field.

Hon'ble Supreme Court further noted that sterilization procedures, including the Pomeroy and Madlener methods, are recognized techniques with varying failure rates ranging between 0.3% to 7%. Even when competently performed, spontaneous recanalization or other natural causes may result in pregnancy. Medical literature recognizes that no method of sterilization is 100% fool-proof, except hysterectomy, which is generally not advisable solely for family planning purposes.

12.3 Accordingly, in ***Shiv Ram (supra)***, it was concluded that:

- Liability cannot be fastened merely on the basis of childbirth after sterilization.
- Proof of negligence must satisfy the Bolam test.



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- Unless a surgeon guarantees 100% success, which ordinarily is never the case, no contractual liability arises.
- If pregnancy occurs despite sterilization, the couple has recourse to termination under the Medical Termination of Pregnancy Act, 1971, which treats failure of a contraceptive method as a ground for termination. If the couple chooses to continue with the pregnancy, the child cannot subsequently be termed “unwanted” for purposes of claiming damages.

13. The above ratio was subsequently affirmed by another three-Judge Bench in ***State of Haryana v. Raj Rani (supra)*** and consistently followed by this Court in ***State of Haryana v. Amaravati (supra)***, ***Balwinder Kaur v. State of Haryana (supra)***, ***State of Haryana v. Samsun Nisha (supra)***, and more recently in ***State of Haryana v. Ram Singh (supra)***.

14. In contrast, the contrary views expressed in ***Smt. Shobha v. Govt. NCT of Delhi (Delhi High Court)***, ***Fullo Devi v. State of Haryana (this Court)***, and ***Tmt. Dhanam v. Secretary to Government, Health and Family Welfare Department (Madras High Court)*** cannot be followed, as they were either rendered prior to *Shiv Ram* or without reference to it.

15. Applying the settled law in *Shiv Ram* to the facts of the present case, it is clear that there is no material on record attributing the failure of sterilization to negligence on the part of the operating surgeon. The findings of the Courts below, therefore, suffer from no infirmity.

16. Consequently, the appeal being devoid of merit, stands dismissed.

(DEEPAK GUPTA)
JUDGE

26.09.2025

Jiten

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No