

Writ Petition No.3634/2016

05/07/2017

Ms. Shanno Shagufta Khan, learned counsel for the petitioner.

Mr. Peyush Jain, learned counsel for the respondent/State.

The petitioner before this Court has filed this present petition for issuance of an appropriate writ, order or direction directing the respondents to grant compensation to the petitioner on account of failure of Family Planning Operation.

The petitioner's contention is that the petitioner on 24/08/2011 has undergone Sterilization Operation at CHC, Kalapipal, Shajapur which is a hospital of State of Madhya Pradesh. The petitioner has further stated that in spite of the operation conducted by the State Government, she became pregnant and later on, on account of further complication she delivered a child through Cesarean Operation.

Learned counsel for the petitioner has straightaway drawn the attention of this Court towards paragraph No.5.7 of the writ petition which refers to a scheme known as "Family Planning Indemnity Scheme" and the scheme provides for payment of compensation of Rs.30,000/- in case of incapacity and in the case of post-operative complications. Learned counsel for the petitioner has vehemently argued before this Court that the petitioner has taken all due care and caution as advised by the Doctor and the operation resulted in failure.

On the other hand, a reply has been filed in the matter and the respondents have stated that the petitioner is not entitled for any relief of whatsoever kind and the petitioner has not followed the advise of the Doctor and has not taken post-operative care. Reliance has been placed upon a judgment delivered by the apex Court in the case of **State of Punjab Vs. Shiv Ram** reported in **IV (2005) CPJ 14 (SC)** (Annex.-R/2) and his contention is that in light of the aforesaid judgment, the question of payment of compensation to the petitioner does not arise.

Heard learned counsel for the parties at length and perused the record.

In the present case, the undisputed facts reveal that the petitioner has undergone Sterilization Operation on 24/08/2011. The undisputed facts also reveal that the petitioner has later on delivered a child through Cesarean Operation. No document has been filed in respect of post-operative care / advise given to the petitioner by the Doctor at the time of operation.

Government of India in order to ensure proper implementation of Family Planning Scheme has issued a manual for Family Planning Operations and has framed a scheme known as Family Planning Indemnity Scheme. As per the scheme and keeping in view the directions of the Hon'ble Supreme Court in the case of **Ramakant Rai & Anr. Vs. Union of India & Ors.** passed in **Writ Petition (Civil) No.209/2003**, the Union of India has laid down the norms and in case of death a sum of Rs.1 Lac has to be

given and a sum of Rs.30,000/- in case of incapacity and Rs.20,000/- in case of post-operative complications. Relevant extract of the scheme in paragraphs No.1.1.9 reads as under:-

“1.1 Directives of Hon'ble Supreme Court:

9. The Union of India shall also lay down the norms of compensation which should be followed uniformly by all the states. For the time being until the Union the Union Government formulates the norms of compensation, the States shall follow the practice of the State of Andhra Pradesh and shall pay Rs.1 Lakh in case of death of the patient sterilized, Rs 30,000/- in case of incapacity and in the case of post-operative complications, the actual cost of treatment being limited to the sum of Rs.20,000/-.”

The scheme is operational from 01/10/2013. In light of the scheme as the factum of operation and delivery of a child has not been denied, there is no documents on record to establish that the petitioner was directed to take post-operative care, this Court is of the opinion that the petitioner is entitled for a sum of Rs.30,000/- as per the Indemnity Scheme.

Learned Government Advocate has drawn the attention of this Court towards Annex.-R/1 which is a literature relating to failure of female sterilization and his contention is that there is no such method which provides for 100% guarantee in case of sterilization operations.

This Court has carefully gone through the aforesaid document, however, the aforesaid document will not supersede the Indemnity Scheme framed by the Government of India. Learned counsel for the State Government has also placed reliance upon a judgment of the Hon'ble Supreme Court in the

case of **State of Punjab Vs. Shiv Ram (Supra)** and his contention is that unless and until it is established that there was negligence on the part of the Surgeon, no compensation can be awarded.

This Court has once again carefully gone through the aforesaid judgment and is of the opinion that the judgment is of the year 2005, thereafter, the Government of India in the year 2013 has framed a scheme based upon the subsequent judgment delivered in the case of **State of Punjab Vs. Shiv Ram (Supra)** dated 01/03/2005 and therefore, in the considered opinion of this Court, the judgment relied upon is again of no help to the State Government.

Resultantly, the writ petition stands allowed with a direction to the Chief Medical and Health Officer, Shajapur to pay a sum of Rs.30,000/- to the petitioner within a period of 60 days from the date of receipt of certified copy of this order. In case, the amount is not paid within 30 days to the petitioner, the same shall carry interest @ 12.5% per annum from 24/08/2011 till the amount is actually paid to the petitioner.

Certified Copy as per rules.

(S. C. SHARMA)
J U D G E