

THE HIGH COURT OF MADHYA PRADESH

W.P. No.144/2017

Indore, Dt.3.01.2018

Ms. Shanno Khan, counsel for the petitioner.

Mr. Virendra Khadav, counsel for the respondent/State.

Heard finally.

By this writ petition, the petitioner has prayed for various directions but when the matter is taken up today, learned counsel appearing for the petitioner has made a limited submission that in terms of applicable scheme, the petitioner is entitled to the compensation of Rs.30,000/-.

The case of the petitioner is that he got married in the year 1998 and he already had two children, therefore he had opted to go for the sterilization and his Vasectomy was done on 13.3.2011 in the camp organised by the State but even thereafter his wife had become pregnant and on account of failure of Vasectomy the petitioner's wife had given birth to a female child on 10.3.2012. At this stage the petitioner is claiming the compensation on the ground of failure of sterilization operation.

Learned counsel appearing for the petitioner referring to the order dated 5.7.2017 passed in W.P.No.3634/2016 in the matter of Smt. Komal Bai Vs. State of M.P. and others and also placing reliance upon the Family Planning Indemnity

Scheme, has submitted that the petitioner is entitled to receive the compensation of Rs.30,000/-.

Though the State has taken a stand in the reply that the failure of Vasectomy was on account of negligence on the part of the petitioner, but learned counsel for State has not disputed the fact that in terms of the order in the case of Smt. Komal Bai, the petitioner is entitled to a sum of Rs.30,000/-. This Court in the matter of Smt. Komal Bai has held as under :-

“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."

Having regard to the aforesaid and considering the undisputed stand of the State before this Court, the present writ petition is disposed of by directing the respondent No.3 to pay a sum of Rs.30,000/- to the petitioner within 60 days from the date of receipt of certified copy of this order. In case the amount is not paid within 60 days to the petitioner, the same shall carry interest @ 12.5% per annum from the date of passing of this order.

C.c. as per rules.

(PRAKASH SHRIVASTAVA)
Judge

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