

## UNDERSTANDING THE SCOPE OF DAMAGES AWARDED IN CASES OF UNWANTED PREGNANCY DUE TO MEDICAL NEGLIGENCE

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### ABSTRACT

*Negligence is caused when there exists a legal duty that when breached by the defendant cause harm. Medical negligence being more aggravating than simple negligence attracts a greater degree of care and thus the damages for the same are also high compared to the ones awarded for negligence. This article deals with two cases of unwanted pregnancy that occurred due to medical failure by the doctors and goes on to analyse the scope of damages in both cases and how they differ from each other even though they both are a case from a common law country and have similar facts to it.*

### INTRODUCTION

We, as humans, are bound by duties in one way or the other. These duties can exist in any form, be it moral or legal. The moral ones are something which even if we overlook, we are not held liable for, while the legal ones, if breached, can become a ground to claim damages, i.e., the amount given to the plaintiff for the loss suffered by him or the injury caused. Though the moral aspect of an issue is disregarded while affixing liability on a person but it is still considered to understand and determine the scope of the remedy that should be provided. Similar concepts are followed in the tort of negligence. "Negligence is the failure to exercise the care of an ordinarily prudent and careful man".<sup>1</sup>

In negligence, the burden of proof is on the claimant, so he must show a causal link, i.e., a balance of probabilities between the loss he has suffered and the defendant's wrong. He must also show that the loss in respect of which he claims is not so "remote" that it is within the range of that for which it is just to make the defendant responsible.<sup>2</sup> Medical negligence tends to fall under the same category. Medical negligence is invoked when the plaintiff has received wrongful treatment (from the doctor, hospital, or any other medical practitioner) which results

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<sup>1</sup> Richard A. Posner, *A Theory of Negligence*, 1 *The Journal of Legal Studies* 29, 29 (1972)

<sup>2</sup> Winfield & Henry Percy, *Winfield and Jolowicz on tort*, 736 (W. Edwin Peel, James Goudkamp eds., 19 ed. 2014)

in an injury to the plaintiff. Such injuries are used to claim damages under the reasonable time provided under the Limitation Act in 1963. Medical negligence attracts a greater degree of duty of care than negligence, as even a minor mistake can lead to someone's death or another life-threatening situation. It has the capability of altering someone's life in such a way that it leads to immutable circumstances. One such change has been discussed in the case of the State of Haryana v Smt. Santra.<sup>3</sup>

### **SCOPE OF DAMAGES IN THE STATE OF HARYANA V SMT. SANTRA AND THE REASONING BEHIND IT**

In this case, the government of Haryana launched a "Sterilization Scheme" under which Smt. Santra approached the chief medical officer for her sterilisation in 1988. After her operation, she was assured that "full, complete, and successful" sterilisation was performed on her, because of which she would not conceive a child. But as one may guess, she conceived a child in the future. When she approached the hospital in her early stages, she was told she was not pregnant, which was proven to be wrong two months later when the pregnancy became fairly apparent. The hospital at that point in time told her that the surgery performed was unsuccessful and that one of her fallopian tubes wasn't closed. Santra, who was already a mother to seven children, couldn't afford to maintain another child and, thus, because of the circumstances, she filed a case to claim damages on grounds of the mental agony caused and the burden of financial stability. She couldn't abort the child because of health issues as well. The hospital, on the other hand, put out a statement denying all the allegations and pleading that Smt. Santra had herself put a thumb impression on papers, which absolved the hospital of any liability in case the operation was unsuccessful.

Both the trial court and the lower appellate court questioned why a certificate of complete and successful sterilisation was issued if the operation wasn't completed and thus held the hospital liable for gross medical negligence. Such questions were viewed through various spectra along with necessary essentials of negligence like the existence of a legal duty, breach of such duty, and injury caused by such breach. Factors like India's population at the time, the plaintiff's financial situation, etc were also taken into due consideration. The doctrine of public policy was also considered in the given situation by analysing the application of the same in various cases from all over the world. Cases like *McFarlane and Another v. Tayside Health Board*,

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<sup>3</sup> *State of Haryana and Ors. vs. Santra* AIR 2000 SC 0295

Thake v Maurice, Allen v Bloomsbury Health Authority, etc were referred to determine the level of damages that should be awarded in the given situation.

There was no unanimous judgement on such cases in any country, as while some dealt with the idea of the doctrine of public policy and sought sterilisation because of the social and economic burden, others dealt with the pro-life idea and talked about the pleasure one receives from the rearing of a child. The court, in the end, found that in the case of State of Haryana v Smt. Santra, the hospital was liable for medical negligence. The government's plea to sovereign immunity was also disregarded and, given the economic condition of Santra as a labourer, she was awarded compensation not only for the injuries caused but also for the future rearing of the girl child, at least till she attains puberty from the state.

Analysing the whole case here Smt. Santra, even after getting a tubectomy, conceived a child whom she couldn't abort or afford to rear financially, which was *res ipsa loquitur* as she worked as a labourer. The medical negligence by the doctor not only caused her mental agony but also physical pain. The said event could have been avoided had she been diagnosed correctly and treated under the reasonable care that was expected of a prudent medical officer in this given situation. So, this points to the conclusion that there was medical negligence not only for the wrongful or incomplete surgery done for which she received damages but also for the wrongful diagnosis she received when she was told she was not pregnant.

### **DIFFERENT APPROACH TOWARDS THE DAMAGES AWARDED IN UDALE V BLOOMSBURY AREA HEALTH AUTHORITY**

A similar situation has been observed in the case of Udale v Bloomsbury Area Health Authority<sup>4</sup> where the woman along the similar facts was awarded damages not only for her pain and suffering caused due to pregnancy but also for the finances like increased accommodation, layette of the child, etc. Though *damnum* was considered and acknowledged, here on consideration of the doctrine of public policy and damages were awarded, the damages for rearing the child till the age of sixteen were not. The judge here took a contrary stand as compared to the one in Smt. Santra v State of Haryana stated that the satisfaction and pleasure one receives from the rearing of a child outweighs any agony that may have been caused after the whole ordeal. They also believed that the child shouldn't think that his birth was a mistake

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<sup>4</sup> *State of Haryana and Ors. vs. Santra* AIR 2000 SC 0295

by awarding damages for his upbringing and thus disregarded the damages for the same. From the two cases, one can determine that the damages in medical negligence can vary even if the cases have similar facts. The unwanted Pregnancies in all the cases due to negligence by doctors or any other medical practitioner caused unrest and also resulted in the birth of an unwanted child that added monetary burden to the plaintiff's financial conditions.

## **DAMAGES**

There can be two situations in which the plaintiff's claim for damages is assessed. *Damnum sine injuria* or damage without injury where the plaintiff does suffer damage but there is no legal injury while the other is *injuria sine damno* or injury without damage where the plaintiff may not suffer any visible damage but does suffer a legal injury. In the latter case, the plaintiff is awarded damages as what is essential is the legal injury that is caused by the actions of the defendant. Here in our study of medical negligence, such injury is the duty of care that the doctor or the defendant owes to the plaintiff. The damages are awarded the moment such duty is breached but what determines the scope of such compensation is the amount of loss or damage which can be both physical and mental. Since the damages in torts are generally unliquidated the claim for damages varies from case to case just like we observed in the above analysed cases. There are several categories of damages and while granting such damages the facts of the case and the level of the breach are analysed. For example, nominal damages are awarded in the case where there is legal injury but no damage, contemptuous damages where though a breach of a right is done, the nature is very trivial to claim damages for, punitive damages are given to make an example out of the defendant and prevent him from repeating it again, etc. In our cases of unwanted pregnancy, the type of damages awarded were generally aggravated damages which are given for the mental agony, pain, and unrest caused to the plaintiff, and compensatory damages which are given to try to restore the plaintiff to the status quo when the injury wasn't done. These damages are awarded in addition to the pecuniary loss suffered.

It is to be noted that the scope of damages awarded is not just limited to the amount of loss suffered but also the financial situation of the plaintiffs in given cases. The economic analysis of the case is not done in isolation to one or two aspects like mentioned above but there are other concepts and domains that are referred to. Such area of research has been done and implemented in various cases from time to time. Theories like the Hand Rule, Interest Rule theory, and Multiplier theory are applied to understand the same and decide the amount of

damages that were applied. In our case of medical negligence due to unwanted pregnancy, the Multiplier theory seems to fit the bill. Though this theory is applied generally in cases where a person dies. Here a birth of an unwanted child has more or less created the same situation. In Multiplier theory the damages are awarded after analysing the link between the loss plaintiff suffers due to the actions of the defendant to the total amount of loss the plaintiff will suffer in coming years because of it. Such multiplication was subconsciously applied in the case of the State of Haryana v Smt. Santra when the judge awarded the compensation at least till the girl child attains puberty. Such pecuniary loss is taken into due consideration along with the ongoing inflation rates as well. Though the multiplier theory may not be applied in its totality in the cases analysed i.e., by not applying the compensation or damages awarded in the previous cases ambit of it, the main idea of awarding and calculating damages is very much followed.

## **CONCLUSION**

From the examination of various cases and theories, it can be concluded that the scope of damages awarded in cases of unwanted pregnancy due to medical negligence is wide and is adjusted as per the facts and needs of the case. Damages have various categories in which they are classified and more than one type of damages can be awarded to make up for the loss suffered by the plaintiff and also serve as a retributive feature for the future if needed. Damages are given after considering the economic situation of all the parties involved to ensure that damages awarded aren't excessive or less than required. The main role of having damages is to try to take the whole situation to status quo as mentioned before and keeping this in mind is how the scope of the same is decided as well.