

MEDICAL CASE LAW

Complete perineal tear after a forceps delivery, not medical negligence; delay in referral for post-delivery complication is negligence [Madras High Court]

Yadav M*

CASE HISTORY

The instant Writ Petition has been filed by a mother seeking compensation from the respondents for the physical pain and mental agony she underwent for nearly nine months after delivering a child in the 3rd respondent hospital due to the alleged negligence on the part of the respondents. On going through the medical literature, it is seen that a perineal tear is not uncommon after an episiotomy procedure. There is a possibility of **4 degrees of perineal tear**. Madras High Court observed that in the present case, the 4th respondent had to perform episiotomy, which is a regular procedure adopted in normal vaginal deliveries. In this procedure, an incision is made on the vagina of the patient to make space at the outlet bigger for the baby to come out comfortably and to make the birth easier and avert possible brain damage for the baby. High Court further added that on carefully going through the medical literature, it is seen that **“it is common for the perineum to tear to some extent during childbirth. Tears can also occur inside the vagina or other parts of the vulva, including the labia. Up to nine in every ten first-time mothers who have a vaginal birth will experience some tear, graze or episiotomy. It is slightly less common for mothers who have had a vaginal birth before. For most women, these tears are minor and heal quickly.”** High Court made it clear that from the above, the 4th respondent was forced to adopt this procedure since the baby's head was at the outlet and was not able to come out, and the petitioner was not able to strain any further. That apart, the fetal heart rate was decreasing,

and to save the baby, the 4th respondent applied outlet forceps after giving episiotomy, whereby the perineum was cut down to create space for the delivery of the baby. This procedure adopted by the 4th respondent cannot be held negligent, and she had decided in the interest of the petitioner and her baby. In the considered view of the Madras High Court, **the 3rd respondent hospital was expected to make effective decisions since the situation faced by the petitioner could not be effectively handled in the 3rd respondent hospital.** This became apparent even on 13.11.2005 when the petitioner was **diagnosed with a complete perineal tear**. At that point, **immediate steps must have been taken by the 3rd respondent to shift the petitioner to the Coimbatore Medical College Hospital.** This decision does not require the consent of the petitioner or her husband. The interest of the patient gained significance, and to waste time for three more days till 16.11.2005 virtually gave an impression in the mind of the husband of the petitioner **that effective steps were not being taken to treat the petitioner, and he was a witness to the pain and agony undergone by his wife.** [Para 22] The High Court concluded that this Writ Petition is allowed in the result, and there shall be a direction to the 1st respondent to pay a compensation of Rs.5 Lakhs to the petitioner against the claim of Rs.10 Lakhs.

COURT JUDGMENT

N. Anand Venkatesh, J. S.Bhanupriya vs The State of Tamilnadu, and 3 Ors., WP No.26460 of 2007. Date of Judgment: 22.07.2022. Madras High Court.

CASE LAW RELIED ON

Dr. (Mrs.) Chanda Rani Akhouri and others reported in 2022 SCC OnLine SC 481. 2. S.K. Jhunjhunwala Vs. Dhanwanti Kaur and Another reported in (2019) 2 SCC 282. 3. Kusum Sharma and Others reported in (2010) 3 SCC 480. 4. Martin F. D'souza Vs. Mohd. Ishfaq reported in (2009) 3 SCC 1. 4. Jacob Mathew Vs. State of Punjab and Another reported in (2005) 6 SCC 1.

A Writ Petition filed before Madras High Court under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent to pay a sum of Rs.10,00,000/- to the petitioner as compensation and consequentially direct the 2nd respondent to initiate appropriate disciplinary action against the 4th respondent.

The petitioner submitted that there was negligence on the part of the 4th respondent since she did not take due care while performing episiotomy. As a result of the same, there was damage/rupture

of the anus resulting in unbearable suffering for the petitioner.

It was further submitted that the 3rd respondent hospital was not taking immediate steps to treat the infected portion, and from 05.11.2005 onwards, the petitioner was made to face unbearable pain and hardship till 16.11.2005, and the husband of the petitioner was forced to discharge her and give her treatment in a private hospital. As a result of the negligence of the 3rd respondent hospital, the petitioner had to undergo three operations after that and also undergo treatment in a vascular care centre. Because of this, the petitioner was forced to bear huge expenses, and the petitioner was not even able to take care of her child for nearly nine months. The learned counsel, therefore, submitted that this is a fit case where the respondents must be directed to pay compensation for their negligence.

The following essential issues emerged for discussion in this case:

Patient Interest First Consideration

Need for Effective Decision by Hospital: No Need for Consent for Referral

Medical Negligence Proved / Compensation

Importance of Discharge Summary: DOPR (Discharge of Personal Request, DAMA: as Medical Certificate and Evidence

Normal Delivery with Forceps Complete Perineal Tear
Doctrine of Vicarious Liability

Jurisdiction of High Court under Article 226 of the Indian Constitution

Importance of Medical Literature / Expert Opinion in Medical Negligence Cases

Known complication, not Medical Negligence

Two Stages of Alleged Medical Negligence

Duty of Doctor while on Leave: Right to Discharge / Referral/Autonomy

EXPERT COMMENTS

Questions for consideration:

Question 1: Can a complete perineal tear that resulted after the procedure's performance be considered negligence by the 4th respondent?

Question 2: Is there negligence by the 3rd respondent in not taking proper care of the petitioner from 5.11.2005 to 16.11.2005?

Note: Madras High Court has to necessarily take into consideration **the medical literature and the opinion given by experts since this Court is not an expert in the field of medicine and this Court does not have the expertise to hold that the procedure performed on the petitioner by the 4th respondent resulting in the complete perineal tear was as a result of insufficient care taken by the 4th respondent. The experts who gave their opinion opined that re-suture would usually be done only after the tissues heal.**

The medical certificate that the private hospital has given shows that the petitioner had to undergo a three-stage surgery to address the tear of the rectum. The first stage of surgery was colostomy, the second was CPT- repair, and the third was colostomy closure. The petitioner underwent the first stage of surgery within four days after the discharge from the 3rd respondent hospital.

The 3rd respondent hospital could have averted this situation by immediately shifting the petitioner to the Coimbatore Medical College Hospital at least on 13.11.2005, and all these procedures could have been done in that hospital.

The delay on the part of the 3rd respondent, which caused anxiety to the husband of the petitioner, should necessarily be held to be negligence on the part of the 3rd respondent hospital. The 3rd respondent hospital, after realising that the petitioner could not be given

adequate care in the hospital, should have immediately shifted the petitioner to the Coimbatore Medical College Hospital.

Suppose this was not done, and the 3rd respondent was waiting for the arrival of a doctor who had gone on leave. In that case, the petitioner cannot continue to face pain and agony. Under the given circumstances, the petitioner's husband thought it fit to shift the petitioner to a private hospital.

Madras High Court holds that there was apparent negligence on the part of the 3rd respondent hospital for not having taken proper care of the petitioner and for having failed to shift the petitioner to Coimbatore Medical College Hospital when the situation warranted.

The role of statutory regulatory authorities and the opinion of experts and medical literature play a significant role in adjudicating a case of medical negligence.

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