

**State of Kerala vs Remadevi**

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**SooperKanoon Citation :** [sooperkanoon.com/1783636](https://sooperkanoon.com/1783636)

**Court :** Kerala

**Decided On :** Aug-14-2020

**Judge :** Honourable Mr. Justice Devan Ramachandran

**Appeal No. :** RFA/622/2010

**Appellant :** State of Kerala

**Respondent :** Remadevi

**Judgement :**

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 14TH DAY OF AUGUST 2020 / 23RD SRAVANA, 1942 RFA.No.271 OF 2007 AGAINST THE JUDGMENT IN OS 410/1997 DATED 09-01-2007 OF II ADDITIONAL SUB COURT,THRISSUR AGAINST THE ORDER/JUDGMENT IN CO 17/2020 OF HIGH COURT OF KERALA APPELLANT/1ST DEFENDANT: DR.K.B.VENUGOPAL(FORMERLY OPHTHALMOLOGY PROFESSOR) PROFESSOR MEDICAL COLLEGE HOSPITAL, KOZHIKODE), PRESENTLY RESIDING AT 'DARSANA', 1910/53

CHALAPPURAM, DR. P.B.MENON ROAD,, CALICUT-673002. BY  
ADVS. SRI.K.MOHANAKANNAN SMT.M.A.ZOHRA  
RESPONDENTS/PLAINTIFF/DEFENDANTS 2 TO 5:

1 REMADEVI, D/O.ALUKANDIPARAMBIL KALIKUTTY AMMA,  
THENHIPPALAM VILLAGE,, TIRUR TALUK, MALAPPURAM DISTRICT.  
2 DR.K.S.SUNEETHI(FORMERLY OPHTHALMOLOGY TUTOR),  
MEDICAL COLLEGE HOSPITAL,, MULANKUNNATHUKAVU,  
THRISSUR. 3 DR.P.U.ASHOKAN PROFESSOR OF DERMATOLOGY  
SECTION, MEDICAL COLLEGE, THRISSUR. 4 STATE OF KERALA -  
REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM.  
5 THE NEW INDIA ASSURANCE COMPANY LTD. KOZHIKODE.

R1 BY ADV. SRI.JAYAKUMAR K.CAVEATOR R1-BY ADV.  
P.B.KRISHNAN - CAVEATOR R5 BY ADV. SRI.P.JACOB MATHEW R1  
BY ADV. SRI.KRISHNA PRADEEP R1 BY ADV. SRI.P.B.KRISHNAN R1  
BY ADV. SRI.MATHEWS JACOB SR. R2 & R3 BY ADV.  
SRI.N.P.SAMUEL OTHER PRESENT: R4 BY SRI.M.V.ANANDAN -  
SR.GP THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY  
HEARD ON 14.08.2020, ALONG WITH CO.17/2020, RFA.333/2007,  
RFA.622/2010, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN  
RAMACHANDRAN FRIDAY, THE 14TH DAY OF AUGUST 2020 / 23RD  
SRAVANA, 1942 CO.No.17 OF 2020 IN RFA. 271/2007 AGAINST THE  
ORDER/JUDGMENT IN RFA 271/2007 OF HIGH COURT OF KERALA  
CROSS OBJECTOR/PLAINTIFF IN O.S: REMADEVI AGED 56 YEARS  
D/O. ALUKANDIPARAMBIL KALIKUTTY AMMA, THENJIPPALAM  
VILLAGE, TIRUR TALUK, MALAPPURAM DISTRICT. BY ADV.  
SRI.P.B.KRISHNAN RESPONDENTS/DEFENDATS NO.1 TO 5 IN O.S.:

1 DR. K.B.VENUGOPAL, AGED 91, OPHTHALMOLOGY PROFESSOR (RETIRED), MEDICAL COLLEGE HOSPITAL, KOZHIKODE-673008. 2 DR.K.S.SUNEETHI, AGED ABOUT 62, OPHTHALMOLOGY TUTOR (RETIRED), THRISSUR MULANKUNNATHUKAVU, MEDICAL COLLEGE, THRISSUR. 3 DR. P.U. ASHOKAN, PROFESSOR OF DERMATOLOGY SECTION, MEDICAL COLLEGE, THRISSUR. 4 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM. 5 NEW INDIA INSURANCE COMPANY LIMITED, KOZHIKODE. R1 BY ADV. K.MOHANAKANNAN THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FINALLY HEARD ON

14.08.2020, ALONG WITH RFA.271/2007, RFA.333/2007, RFA.622/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 14TH DAY OF AUGUST 2020 / 23RD SRAVANA, 1942 RFA.No.333 OF 2007 AGAINST THE JUDGMENT IN OS 410/1997 DATED 09-01-2007 OF II ADDITIONAL SUB COURT, THRISSUR APPELLANT/2ND DEFENDANT: DR.K.S. SUNEETHI RETIRED OPHTHALMOLOGY ASSISTANT PROFESSOR, W/O.DR.ASHOKAN, 'GANESH MANDIR', PERINGAVU DESOM AND VILLAGE,, THRISSUR. BY ADV. SRI.N.P.SAMUEL RESPONDENT/PLAINTIFF:

REMA DEVI, D/O. ALUKANDIPARAMBIL KALIKUTTY AMMA, THENJIPPALAM VILLAGE, THIRUR TALUK, MALAPPURAM DISTRICT. R1 BY ADV. SRI.K.JAYAKUMAR R1 BY ADV. SRI.P.B.KRISHNAN THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14.08.2020, ALONG WITH CO.17/2020, RFA.271/2007, RFA.622/2010, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 14TH DAY OF AUGUST 2020 / 23RD SRAVANA, 1942 RFA.No.622 OF 2010 AGAINST THE DECREE AND JUDGMENT IN OS 410/1997 DATED 09-01-2007 OF II ADDITIONAL SUB COURT,THRISSUR APPELLANT/4TH DEFENDANT: STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,, THIRUVANANTHAPURAM. BY GOVERNMENT PLEADER RESPONDENTS/PLAINTIFFS & DEFENDANTS 1 TO 3 & 5:

1 REMADEVI AGED 20 YEARS D/O.ALUKANDIPARAMBIL KALIKUTTY AMMA, THENJIPPALAM VILLAGE, TIRUR TALUK, MALAPPURAM DISTRICT - 673 636. 2 DR.K.B.VENUGOPAL, AGED 53 YEARS, OPHTHALMOLOGY PROFESSOR,, MEDICAL COLLEGE HOSPITAL, KOZHIKODE - 673 008. 3 DR.K.S.SUNEETHI, AGED ABOUT 40 YEARS, OPHTHALMOLOGY TUTOR, THRISSUR, MULANKUNNATHUKAVU MEDICAL COLLEGE- 680 581. 4 DR.P.U.ASOKAN, PROFESSOR OF DERMATOLOGY SECTION, MEDICAL COLLEGE, THRISSUR 680 581. 5 NEW INDIA ASSURANCE COMPANY LTD., KOZHIKODE-680 307. R1 BY ADV. SMT.GEETHA P.MENON R1 BY ADV. SRI.P.B.KRISHNAN R1 BY ADV. SRI.P.M.NEELAKANDAN R1 BY ADV. SRI.R.SURAJ KUMAR R2 BY ADV. SRI.K.MOHANAKANNAN R5 BY ADV. SRI.MATHEWS JACOB (SR.) R5 BY ADV. SRI.P.JACOB MATHEW THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON

14.08.2020, ALONG WITH CO.17/2020, RFA.271/2007, RFA.333/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CR

## **JUDGMENT**

The life of Smt. Rema Devi, a sprightly 15 year old, full of life, good in studies - with the promise of a highly productive life - was horribly and irreversibly altered in August, 1987; when she frighteningly realised that she was unable to see and had lost her sight - not on account of ailment or natural causes - but due to iatrogenic errors at the hands of doctors, whom she had consulted a few days ago for a routine checkup and a minor eye infection.

2. The sudden loss of eye sight is a devastating and life

changing event, unfathomably affecting a person's whole being, plummeting him/her to very strong and overwhelming grief and loss. In such cases patients often experience panic and confusion lasting several years - if not the life time - coupled with feelings of helplessness, hopelessness, despondency and fear, compounded by physiological conditions of insomnia, loss of appetite, aggression, tension, disorganisation, restlessness, inability to concentrate and even depression.

3. Stories of medical remedies and procedures sometimes causing more harm than good have been recorded from time immemorial.

4. An iatrogenic disorder occurs when the deleterious

effects of the therapeutic or diagnostic regime causes a pathology contrary to the intended result on the patient. Semantically, the word 'iatrogenesis' is derived from Greek and means 'brought forth by the healer'. However, when such errors are directly on account of mistakes committed by professional doctors, the situation becomes grave and serious.

5. The exordium as afore was necessitated because

these appeals - at the instance of two doctors and the State of Kerala - call into question the judgment and decree of Sub Court, Thrissur, in O.S.No.410/1997, which was filed by Ms. Remadevi aforementioned (who will hereinafter be referred to by her name or as the plaintiff), awarding an amount of Rs.2,93,000/- to her as

damages - to be paid to her in compensation for the total loss of her eyesight - which the said Court has concluded affirmatively to be on account of iatrogenic lapses and mistakes from the appellants - doctors, attached to the Government Medical College, Kozhikode, thus holding the State to be vicariously liable.

6. Pertinently, Smt.Rema Devi has also filed a cross

objection in R.F.A.No.271/2007, seeking enhancement of the amounts awarded, asserting the sums now adjudged by the Trial Court to be egregiously insufficient and grossly disproportionate to her life long agony.

7. A close look through the necessary facts and factual

backdrop becomes obviously necessary for this Court to go forward, and I, therefore, will indite them presently, as forgathered from the pleadings on record. For the sake of ease, I will refer to the parties by their name or as they are arrayed in the suit.

8. Smt.Rema Devi is the younger daughter of her

parents and her father had died in 1986, when she was pursuing her tenth standard studies. She developed redness in the eyes on 02.08.1987, which led her and her mother to consult defendant No.1 - Dr.K.B.Venugopal, who prescribed 'Actrimforte' and 'Genta drops' to be administered in her eyes. However, she developed rashes all over body almost immediately and this was acute in her left eye. Therefore, on 04.08.1987, she met Dr.K.B.Venugopal again, who prescribed 'Avil', which is an anthihistamine, obviously being under the impression that what she was exhibiting was an allergic reaction. Since this did not give her any relief, she and her mother met Dr.Venugopal on 06.08.1987, when the Doctor prescribed a tablet by name 'Wysolone' 5 mg, asking her to take it for ten days.

9. However, on the very next day, namely 07.08.1987,

Smt.Rema Devi's condition worsened, forcing her to meet Dr.Venugopal once again. Seeing her condition, Dr.Venugopal referred her to defendant No.3 - Dr.P.U.Ashokan, who was a Dermatologist with the Medical College, Kozhikode,

along with a letter of reference - which has been marked on record as Ext.A2 - in which he had noted 'Stevens Johnson Syndrome drug

reaction' and that 'Actrimforte' tablet created this reaction. Dr.P.U.Ashokan, on 08.08.1987, admitted Smt.Rema Devi at the Medical College, Kozhikode, on which day, the record shows that she had full eye sight but was suffering from rashes on her skin. After a few days of treatment under Dr.Ashokan, the skin condition of Smt.Rema Devi became better but her condition of her left eye became far worse.

10. This finally led to a surgery being conducted on her left eye by defendant No.2 - Dr.K.S.Suneethi, who is the wife of Dr.P.U.Ashokan and the assistant to Dr.K.B.Venugopal.

Unfortunately, after a few days, when the sutures were removed, Smt.Rema Devi had lost her sight fully in her left eye and an abscess had formed in her right eye.

11. On 18.9.1987, Smt.Rema Devi was discharged from

the hospital, being advised to take a paracetamol medication by name 'crocin' and was recommended surgery for the right eye also. However, since she had already lost sight in her left eye, the records reveal that Smt.Rema Devi and her mother was unwilling for a further surgery, since no guarantees had been given to them by Dr.Venugopal or by Dr.Suneethi that her right eye could be completely saved.

12. Smt.Rema Devi says that, therefore, on 07.10.1987,

she went to the Little Flower Hospital, Angamaly, to consult the Doctors there, who informed her that 'Actrimforte' contains sulpha and causes severe allergic reaction in many people and that it should not have been prescribed or administered by any Doctor without a test dose having been done before.

13. Smt. Rema Devi alleges that she lost sight in both

her eyes on account of the iatrogenic errors of the defendants - Doctors and that, after she obtained majority on 20.05.1991, she instituted the suit claiming an amount of Rs.4 lakhs, along with an application for leave to sue 'in forma pauperis', which was allowed as per the order in O.P.No.111/1993 dated

28.07.1997.

14. The records further reveal that Dr.K.B.Venugopal

filed a written statement denying all allegations against him and contending that the suit is not maintainable, because no notice under Section 80 of the Code of Civil Procedure (CPC for short) had been issued and also because another suit had been instituted by Smt.Rema Devi's mother as O.S.No.61/1991 before the same Court.

15. On the factual allegations pleaded against him, Dr.Venugopal averred that Smt.Rema Devi had been suffering from acute catarrhal conjunctivitis of both eyes and that he had

prescribed her apposite medicines, both antibiotic and 'contrimoxazole' tablets. He accused Smt.Rema Devi of not having taken these medicines properly, with an insinuation that she may have taken other kinds of treatment, including 'Homeopathy and Ayurveda, which led to her complicated condition. He further said that when Smt.Rema Devi had approached him, she was already suffering from 'Stevens Johnson Syndrome' and that he had recommended immediate hospitalization, which was refused by her and her mother, informing him that they wanted to go to the Little Flower Hospital. He said that it was in such circumstances, that he

prescribed 'Wysolone' tablets, but that when her condition became worse, he referred her to the 3 rd respondent - Dr.P.U.Ashokan, whose treatment made her well. He asserts that it is solely on account of the lack of proper diligence by Smt.Rema Devi, that she developed 'iris prolapse' in her left eye, which then had to be operated upon, thus saving its sight, though with a little diminution. He reiteratly stated that he had advised Smt.Rema Devi not to expose herself to sunlight, smoke, fire etc., and that if she had lost her eye sight subsequently, it is only because she did not heed to such caution.

16. After saying as afore, Dr.Venugopal averred in his

pleadings that he had 28 years of experience as an eye specialist and that his actions have not caused any mental or physical agony or pain to Smt.Rema Devi. He thus prayed that the suit be dismissed.

17. As far as defendants 2 and 3 are concerned, they filed a common written statement, again asserting that the suit

is not maintainable because the mandatory notice under Section 80 of the CPC had not been given. Defendant No.2 - Dr.Suneethi pleaded complete innocence saying that she only assisted Dr.Venugopal and that the surgery conducted by her on Smt.Rema Devi's left eye was as decided by him. She explained that the surgery was done so as to stop the spread of disease

into the inner parts of the eye ball of Smt.Rema Devi; and adopted all the assertions and affirmations of Dr.Venugopal as being part of her pleadings also.

18. Defendant No.3 - P.U.Ashokan contended that he has been arrayed unnecessarily in the party array, since there were no allegations against him and because, admittedly, his treatment had been successful.

19. The defendants 2 and 3 concluded their pleadings by maintaining that it is only on account of the proper treatment given to Smt.Rema Devi that her life had been finally saved.

20. The 4th defendant, which is the State of Kerala, also

filed a written statement completely supporting defendants 1 to 3, again alleging that the suit is not maintainable. In addition to the allegations of the defendants - Doctors, the State took the stand that the case of Smt.Rema Devi cannot be believed, since

she did not complain to any superior Authority, thereby to mean that she had received all necessary and proper treatment; and further that since the details of the subsequent treatment which she obtained from the Little Flower Hospital, Angamaly, had not been disclosed, no cause can be made against the defendants. The State thereafter, reiteratingly affirmed that defendant No.1 -

Dr.Venugopal and defendant No.2 - Dr.Suneethi are extremely experienced Doctors with great degree of expertise and that they have treated thousands of patients without any complaint in the past.

21. Interestingly, the written statement of the State of Kerala also adopts all the assertions and averments of defendants 1, 2 and 3, seeking that they may be read as part of it also; finally alleging that the disability and the trauma suffered by Smt.Rema Devi, may be on account of 'other reasons'.

22. The New India Assurance Company Limited was

arrayed in the suit as defendant No.5 on the assertion of Smt.Rema Devi that they had issued a valid policy to defendant No.2 - Dr.Suneethi against claims of medical negligence. They filed a written statement asserting that no such policy had been issued to Dr.Suneethi and that the policy details were not available with them, since it had to be legally retained by them only for five years. They also said that no intimation of the alleged incident had been given to them and that the treatment offered by Dr.Suneethi was without any error and without any deficiency, she having taken due care and caution, as is expected of a Doctor in her position.

23. On the afore pleadings, the Court framed the following issues: 1. Whether the suit is maintainable ?

2. Whether the suit is barred by limitation ? Whether the plaintiff is entitled for the damages claimed ? If so, what is the quantum ?

3. Whether the fifth defendant is liable to indemnify the defendants 2 and 3 on the strength of the insurance policy issued ?

4. Reliefs and costs ?

24. The suit was thereafter, taken to trial and Exts.A1 to

A16 were marked on side of Smt.Rema Devi; while Exts.B1 to B4 were marked on the side of the defendants. Five witnesses, including Smt.Rema Devi as PW1 and her mother as PW2, were examined on the side of the plaintiff; while defendants 1 to 3 as DW1 to DW3 respectively and two medical experts as DW4 and DW5,

were examined on the side of the defendants.

25. After an evaluation of the pleadings and evidence on

record, the Trial Court decreed the suit with costs against defendants 1 and 2 - Dr.Venugopal and Dr.Suneethi, for an amount of Rs.2,93,000/- with interest at the rate of 7.5% from the date of suit till the date of realization of the amount. The Trial Court also directed the 4th defendant - State of Kerala to pay 60% of the decreed amount, being the share of the liability found against Dr.K.B.Venugopal; while the balance 40% was fixed as the share to be paid by the 5 th respondent in terms of the Insurance Policy issued by them in favour of Dr.Suneethi.

26. It is this judgment and the resultant decree which has been assailed by the defendants 1, 2 and 4 through separate appeals before this Court, as under:

a) RFA.No.271/2007 by defendant No.1 - Dr.K.B.Venugopal b) RFA.No.333/2007 by defendant No.2 - Dr.K.S.Suneethi c) RFA.No.622/2010 by defendant No.4 - State of Kerala

27. In addition to the above appeals, Smt.Remadevi has

filed a cross objection, numbered as C.O.No.17/20202, in RFA.No.271/2007, seeking that she be awarded the full plaint claim;, with a further plea, which is supported by an application for amendment of the plaint, that the compensation award be enhanced to Rs.25 lakhs.

28. Before I continue, I must record the submissions

made on behalf of the Insurance Company that they have not challenged the decree and that they have deposited the amounts as ordered against them, which has already been released to Smt.Remadevi.

29. I have heard Smt.Zohra, learned counsel for the appellant - Dr.Venugopal in RFA.No.271/2007; Sri.Pleasant T. Samuel, learned counsel for the appellant - Dr.Suneethi in

RFA.No.333/2007; the learned Senior Government Pleader - Sri.M.V.Anandan, appearing for the State of Kerala, appellant in RFA.No.622/2010; Sri.K.Jayakumar, learned Senior Counsel, instructed by Sri.P.B.Krishnan, learned counsel appearing for Smt.Rema Devi, who is a respondent in all these cases and Sri.Mathews Jacob, learned Senior Counsel, assisted by Sri.Jacob Mathew, learned Standing Counsel for the Insurance Company.

30. I have examined the pleadings and the evidence on

record very closely, since I am aware that this is a case where there are allegations of medical negligence against Doctors who are stated to have had great professional track record. However, if the facts as stated by Smt.Rema Devi are true, this would be of no avail to them, since the consequences will certainly have to follow.

31. Needless to say, this Court is enjoined to conclude

whether the findings of the Trial Court are worthy of favour; in which event, whether Smt.Rema Devi is entitled to a higher amount than what has been awarded by it.

32. As seen above, the pleadings of the defendants, who are the appellants herein, are basically to the effect that they have done no wrong and that the trauma and the agony suffered

by Smt.Rema Devi are either on account of factors that are attributable to her or which that are not disclosed. They also have a claim that the suit is not maintainable because a notice under Section 80 of the CPC had not been issued and because another suit had been filed by her mother in the year 1991, namely O.S.No.61/1991, seeking the same reliefs.

33. I therefore, propose to first deal with the issue of maintainability first, before moving forward on the merits of the contentions of the rival parties.

34. As regards notice under Section 80 of the CPC is concerned, the evidence shows that Smt.Rema Devi had issued

the same to defendants 1 to 3, as also to the Chief Secretary of Government, on 31.07.1992 - a copy of which has been marked in evidence as Ext.A5. The acknowledgment card of the Chief Secretary to Government, dated 06.08.1992, is also on record as Ext.A9. Interestingly, defendants 1 to 3 had issued replies to this notice; and the suit was, thereafter, filed on 02.04.1993, after 60 days. Obviously, therefore, the allegations regarding the non issuance of a notice under Section 80 of the CPC can never find approval from me.

35. On the contention of the suit being not maintainable

because an earlier one had been filed by the mother of Smt.Remadevi and the corollary issues relating to limitation are concerned, it is without doubt - as is evident from the records - that O.S.No.61/1991 had been filed by the mother of Smt.Remadevi, when she was a minor. After Smt.Remadevi became a major on 20.05.1991 - which is borne out from her

date of birth register, namely Ext.A11 - she noticed certain defects in the said suit and thus persuaded her mother to withdraw the same, which was permitted by the Trial Court.

36. Pertinently, CRP.Nos.787/1991 and 1043/1998 were filed by the defendants against the order of the Trial Court permitting withdrawal of O.S.No.61/1991 and thus the same was stayed by this Court for some period of time. Finally, this Court directed O.S.No.61/1991 to be restored and by then, Smt.Remadevi had filed O.S.No.410/1997.

37. As I have seen above, Smt.Remadevi initially filed P.O.P.No.11/1993, invoking order XXXIII of the CPC, on

02.04.1993 and the suit was then instituted, after obtaining leave of the Court, on 28.07.1997. Subsequently, the mother of Smt.Remadevi filed I.A.No.3100/1999 in O.S.No.61/1991 to withdraw the suit, which was, however, dismissed by the Trial Court, which led her to approach this Court by filing C.R.P.No.1746/2000, which was allowed on 08.03.2006. Thus, finally, O.S.No.61/1991 was withdrawn on 16.06.2006.

38. These factual aspects are unreservedly admitted by

the appellants/defendants and I therefore, cannot find any reason why they should now still contend that O.S.No.410/1997 is either not maintainable or that it is hit by the laws of Limitation. I therefore, repel those contentions, approving the findings of the Trial Court.

39. Coming to the merits of the contentions of the rival parties on the facts involved, the most important document, as

far as this Court is concerned, is Ext.A2 - which is a letter of referral of Dr.Venugopal to Dr.P.U.Ashokan - wherein, he has unambiguously noted that Smt.Rema Devi was suffering from 'Stevens Johnson Syndrome Drug Reaction' and that 'Actrimforte tab' created the said reaction. The evidence of the defendants 1 to 3 as DW1 to DW3 would establish beyond doubt that they also admit that Smt.Rema Devi was afflicted by the afore syndrome.

40. However, Dr.K.B.Venugopal, as DW1, deposed that

Smt.Rema Devi may have used Homeopathy or Ayurveda and that this may have led to the said syndrome; further asserting that when she and her mother approached him on 06.08.1987, he had advised admission in the medical records. However, to a specific question, Dr.Venugopal as DW1, unequivocally admitted that he did not know how to treat 'Stevens Johnson Syndrome', but that he still prescribed 'Wysolone' tablets for a period of ten days.

41. That said, the evidence of Dr.K.S.Suneethi and

Dr.P.U.Ashokan, as DW2 and DW3 respectively, is to the effect that Smt.Rema Devi had severe 'Stevens Johnson Syndrome'; and, in fact, Dr.Ashokan admitted that she was also suffering from 'Iris prolapse'. Dr.Suneethi, on the other hand, as DW2, maintained that but for the surgery conducted by her, Smt.Rema Devi would have died and that there was no 'Iris prolapse' in her eye on 08.08.1987, when Dr.Ashokan had admitted her in the Medical College, Kozhikode, as per the reference letter issued by Dr.Venugopal.

42. Since Dr.Venugopal as DW1 deposed that he had

recorded his advise to Smt.Remadevi for hospitalization on 06.08.1987, the Trial Court, on her application, issued notice to the superintendent of Medical College, Kozhikode to produce the same.

43. However, the Superintendent and the record section

clerk of the said hospital, who was also examined as PW4, filed affidavits stating that the case sheet had been destroyed, however, without producing the Record Destruction Register evidencing the same.

44. It must also be kept in mind at this time, that Dr.K.B.Venugopal insinuatingly deposed that Smt.Remadevi

had approached him on 02.08.1987, after having taken treatment at the Little Flower Hospital, Angamaly; and to refute this, she produced and marked Ext.A4 out-patient card issued

by the said hospital. Though the date of first admission of Smt.Remadevi in the said hospital is not available from the said card, it is specifically seen therein that it was renewed on 07.10.1987, based on which, she was asked, while she deposed as PW1, as to when she had gone to the said hospital for the first time. Smt.Remadevi testified that Ext. A4 was issued on 07.08.1987, namely, the day after 'Wysolone tab' has been prescribed to her by Dr.Venugopal; and to support this, she also produced Ext.A16, which is page No.100 of the In-patient Register of Little Flower Hospital, which showed her first

admission on 09.10.1987 for 'Stevens Johnson Syndrome', which was much after she was discharged by the Kozhikode Medical College.

45. The evidence of DW3 and DW5, who are medical experts, would also throw great amount of light in the controversy between the parties. DW3 is Dr.Rugmini, who had also issued Ext.A12 and A13 disability certificates to

Smt.Remadevi. She specifically averred that Actrimforte contains sulpha, with a great chance of reaction; and that there are various other drugs which

Dr.K.B.Venugopal could have prescribed other than this. She further said that

'Wysolone' can be given only under medical supervision, preferably as an In-Patient and that too, not more than for 2-3 days; adding to her opinion by saying that Avil cannot be used treat Stevens-Johnson Syndrome. Her specific opinion as regards 'Wysolone' is that it can be only used as a life saving drug and is not to be given to Out-Patients.

46. The afore opinion of DW3 was more or less in lines

with the opinion given by DW5-Dr.Alex Joseph, who was the Professor and Head of Department of Jubilee Mission Medical College, Trissur, who had been summoned by the defendant as witness on their side. He also admitted that 'Actrimforte' may cause severe reaction; but then opined, based on the treatise by Sir Steward Duke Elder that the 'most common cause of catarrhal conjunctivitis is Pneumococcal infection, which is

susceptible to sulphananides'. He further conceded that 'Wysolone' in high doses could have been administered on Smt.Remadevi only for a few days and under the constant watch of a doctor.

47. The impugned judgment of the Trial Court shows that the afore factors and evidence have been carefully evaluated and that since the Court found no reason not to

accept the opinion of the experts - one of them have been summoned by the defendants themselves - it held the plea of Smt.Remadevi worthy of acceptance and thus decreed the suit; however, awarding only an amount of Rs.2,93,000/- to her.

48. Curiously, even after finding negligence to have been

established against defendants 1 and 2, the Trial Court did not grant her the amounts claimed in the plaint, but only the aforementioned sum, adopting the multiplier method, which is normally used in cases of accidents under the Motor Vehicles Act.

49. Smt.M.A.Zohra, learned counsel for

Dr.K.B.Venugopal, tried valiantly to upset the judgment of the Trial Court, but was unable to impress me, because the evidence - as I have seen above - clearly shows that her client had prescribed Actrimforte to Smt.Remadevi to 02.08.1987, when she had merely a condition of redness in her eyes. The evidence of experts, namely, DW3 and DW5, are unmistakable that this drug could not have been administered without a test dose having been first attempted. This is more so because the experts are firm in their opinion that Actrimforte contains sulphananide which can cause serious contra-indications, and

therefore, the administration of the same without due diligence was certainly likely to cause severe reaction, including the Stevens-Johnson Syndrome', which finally gripped Smt.Remadevi.

50. Further, even on 04.08.1987 and 06.08.1987, Dr.K.B.Venugopal did not see that his prescription had created extreme agony to Smt.Remadevi and even without

understanding the contra-implications of 'Wysolone', he prescribed it to her for a period of 10 days. Vitally, the referral letter he then issued to DW3-Dr.P.U.Asokan, namely, Ext.A2, speaks without hesitation that he was also aware that Smt.Remadevi had contracted Stevens-Johnson Syndrome due to reaction of Actrimforte tab, which he had prescribed. To make it worse, the evidence clearly establishes that he tried to cover up his errors by uncharitably accusing Smt.Remadevi of lack of diligence and care; in refusing to get hospitalised and in seeking other treatment, when none of these were true. Obviously, therefore, I cannot find favour with any of the

submissions of Smt.M.A.Zohra that the condition of Smt.Remadevi was not on account of the prescriptions issued by and the negligence of Dr.K.B.Venugopal.

51. As regards the 2nd defendant-Smt.K.S.Suneethi is

concerned, her learned counsel, Sri.Pleasant T. Samuel, submitted that she was only assisting Dr.K.B.Venugopal and that everything she did was as instructed by

him. He says that the evidence on record limpidly establishes that it was on account of the intervention of Dr.K.S.Suneethi, through a surgical procedure, that the life of Smt.Remadevi had been saved; and therefore, that the Trial Court ought not to have mulcted her with any liability, thus praying that her appeal, namely RFA No.333/2007, be allowed.

52. Even when I hear Sri.Pleasant T. Samuel on the afore

lines, it is indubitable that Dr.K.S.Suneethi has fully affirmed all the assertions of Dr.K.B.Venugopal and has even adopted the averments in his written statement to be part of her own. She also admitted that Smt.Remadevi was suffering from 'Stenvens- Johnson Syndrome', however, saying that she operated upon her left eye to prevent the disease from spreading into its inner parts. Her specific testimony as DW2 was that she was Dr.K.B.Venugopal's assistant and conducted Surgery under his guidance; but was unable to explain how Smt.Remadevi lost her eyesight after the said surgery and how an abscess was formed

in her right eye thereafter. Since she also claims to be a person of great experience, it is ineffable how she did not correctly see the agonising condition of Smt.Remadevi and then performed the surgery - be that under the guidance of Dr.K.B.Venugopal or otherwise - finally leading to Smt.Remadevi losing her eyesight completely in the eye, in which it was performed. The Trial Court has, therefore, found that Dr.K.S.Suneethi also to be responsible in part and I am certain in my mind that this view cannot be disturbed, going by the evidence available on record.

53. The learned Senior Government Pleader,

Sri.M.V.Ananadan, very interestingly, made submissions which are totally contrary to the averments in the written statement filed by the State of Kerala in the Trial Court and which are also carried forward in the Memorandum of Appeal in RFA

No.622/2010. The learned Senior Government Pleader attempted to say that the State cannot be burdened with any responsibility for the medical errors of Dr.K.B.Venugopal and Dr.K.S.Suneethi, since they appear to have acted without

necessary care and caution expected of professional doctors. He then, in the same breath, took an alternative plea that the negligence of Dr.K.B.Venugopal and Dr.K.S.Suneethi has not

been established, since Smt.Remadevi did not make a single complaint against them, but still proceeded to file a suit without approaching the higher Authorities. He thus prays that RFA No.622/2010 be allowed.

54. I have to say that I am completely taken aback by the

afore submissions of the learned Senior Government Pleader, since they are not merely contrary to the version of the State of Kerala in their written statement before the Trial Court, but are also against the averments in the Memorandum of Appeal in RFA 622/2010. Pertinently, the State has, in their pleadings, taken the position consistently that both Dr.K.B.Venugopal and Dr.K.S.Suneethi are experienced doctors and that the allegation of negligence against them has not been proved in any manner whatsoever. As I have said above, the written statement filed by the State of Kerala before the Trial Court adopts the averments of defendants 1 to 3 in their respective written statements, thus supporting them all the way; and therefore, I am unable to understand why that position is now given up, saying that even if they are negligent, the State cannot be found vicariously responsible for their actions.

55. I can only see this to be an attempt on their part to

shirk responsibility since they are also now finally aware that the allegations of medical negligence made by Smt.Remadevi are wholly substantiated. I cannot accept this in any manner and am firmly of the view that the factum of the State having filed an appeal against the judgment in question, actively supporting both Dr.K.B.Venugopal and Dr.K.S.Suneethi, makes them responsible vicariously to the fullest extent for the wrongs committed by the doctors, who were admittedly employed under them.

56. Sri.K.Jayakumar, learned Senior Counsel appearing

for Smt.Remadevi, supported the holdings and findings in the impugned judgment based on the evidence on record; but then made a submission that the Trial Court has erred in not granting his client the entire amount claimed in the plaint, but limiting it to Rs.2,93,000/-, predicated that the 'multiplier method' known only to cases under the Motor Vehicles Act, could not have been adopted in a case of this nature. The learned Senior Counsel, therefore, vehemently maintained that his client is entitled to the full amount as claimed in the plaint and pleaded that, therefore, the cross objections be allowed.

57. After saying so, the learned Senior Counsel submitted that his client has also filed I.A.No.2/2020 in RFA

seek an amount of Rs.25 lakhs. He submitted that while the suit was framed, his client was merely 20 years in age and had not understood the actual impact of her disability in its full and horrifying perspective, but that having lived as a blind for a considerable period of time since 1987, she feels that she ought to have claimed a much higher amount towards compensation. He says that she has, therefore, been advised to seek Rs.25 lakhs and prays that the such application be allowed.

58. In substantiation of his afore request,

Sri.K.Jayakumar, the learned Senior Counsel, submitted that the monetary value of the Rupee in the year 1993, when the suit was filed and what is it today would certainly justify this this plea for amendment, because Rs.1 in 1993 is equivalent to Rs.631.2 in the year 2020. He says that, in other words, the purchasing power of Rs.1 in the year 1993 equals Rs.631.2 today, because the annual average inflation rate has been 6.8%.

59. He relied on the 'Inflation Tool' available in the internet site of 'Google' to lend support to his submissions and

has also produced the copies of the information available on internet as to the Inflation Timelines in India and the 'Compound Interest Formula' applicable, to assert that Rs.4 lakhs at the time of filing of the suit would be equivalent or much more than Rs.25 lakhs today. He thus prays that the cross objections be allowed,

after allowing his client to amend the plaint as afore.

60. As regards the contentions of Sri.K.Jayakumar on the

merits of this appeal are concerned, I have no doubt that his client - Smt.Remadevi, is fully entitled to succeed in the suit for the reasons that I have already recorded above.

61. As I have said in the prefatory paragraphs of this

judgment, it would have been extremely frightening for Smt.Remadevi to wake up a fine morning and find that she had lost her eyesight. The impact that this could have created on her, both physiologically and psychologically, is certainly something that may not be capable of being fully compensated in terms of money and it is without doubt that she is entitled to the maximum that the law can offer her.

62. I am also left without any doubt that the negligence of Dr.K.B.Venugopal and that of Dr.Suneethi is writ large in the

proceedings and evidence on record; and therefore, that the Trial Court could not have declined to grant the sums sought for by Smt.Remadevi in the plaint, adopting the 'multiplier method', which in any event, is only applicable to a case under the Motor Vehicles Act. I fail to understand how the Trial Court could have adopted this method in a suit of this nature, when the claim for Rs.4 lakhs of Smt.Remadevi for the loss of her eyesight is extremely modest and reasonable and much lesser than what she could have claimed.

63. That said, however, the adscititious question before

me is whether Smt.Remadevi can be allowed to amend her plaint, to seek compensation of Rs.25 lakhs, at this stage. I am afraid that even going by the submissions of Sri.K.Jayakumar, learned Senior Counsel, this may not be possible, because the contention impelled is that Rs.100/- in 1993 is equivalent to Rs.631/- today. This, in fact, shows that the compensation claimed by Smt.Remadevi, when the suit was filed, is equivalent to Rs.25 lakhs today; and

therefore, that the said claim was reasonably good going by the standards then. I cannot, therefore, adopt the value of money today to retrospectively fix the value of money at the time when the suit was filed,

particularly when the plaintiff had consciously sought only Rs.4 lakhs.

64. Of course, as I have already indicated above, a higher claim than what is claimed in the plaint could have been found reasonable, since the loss of eyesight of both eyes

unquestionably subjected Smt.Remadevi to unfathomable trauma. However, even with all the sympathy that this Court may have for Smt.Remadevi, the plea for amendment of the plaint retrospectively for an amount of Rs.25 lakhs cannot be granted at this stage. I, therefore, dismiss this request of Sri.K.Jayakumar and consequently, I.A.No.2/2020.

65. Since I have already concluded that Smt.Remadevi is

entitled to the entire Rs.4 lakhs as claimed in the plaint, the further aspect is whether the additional amounts that I propose to now grant her will have to be apportioned between defendants 1 and 2, as has been done by the Trial Court.

66. This is where the argument of Sri.T. Pleasant Samuel

comes into play. He asserts vehemently that without the intervention of his client Dr.K.S.Suneethi, the plaintiff may have even lost her life. The evidence on record to some extent justifies this and coupled with the fact that Dr.K.S.Suneethi was

only acting as directed by Dr.K.B.Venugopal, I am persuaded to the opinion that all additional consequences should befall upon the former and not Dr.K.S.Suneethi. Hence, I am with little doubt that the additional amounts that this Court proposes to grant, would have to be borne by Dr.K.B.Venugopal and since the State is vicariously responsible for his errors, the said amounts would have to be paid by them, along with applicable interest.

67. All that which thus finally survives is the plea of Dr.K.B.Venugopal that he be freed from the liability to

reimburse the amounts to be vicariously paid by the Government. His learned counsel, Smt.Zuhara, submits that Dr.K.B.Venugopal is presently more than 92 years of age, is leading a retired life and that throughout his professional career has never had one other instance of medical negligence or error been reported against him. She says that Dr.K.B.Venugopal has treated thousands of patients and that his track record has been exceptional, except for this one incident.

68. Smt.Zuhara further submits that since even the State of Kerala has, in their pleadings, unequivocally conceded that Dr.K.B.Venugopal has never given an occasion to suspect any

act of negligent or deliberate error from his part in the past, all which could be seen in this case is an error of judgment from him. She thus prays that the impugned judgment, to the extent to which it allows the State of Kerala to recover the amounts from Dr.K.B.Venugopal, be vacated.

69. Shri.M.V.Anandan, learned Senior Government

Pleader, opposes this plea stating that the consequences of the negligence and error of Dr.K.B.Venugopal cannot be mulcted on the State and prays that even if this Court is to direct them to make payment on his behalf vicariously, the permission granted by the Trial Court to recover the amounts from him may not be disturbed.

70. Normally, in cases like this, the liberty to recover

from the erring Doctor would certainly be the norm. However, in this case, there is a singular circumstance which requires to be borne in mind and which persuades this Court to think otherwise. This is because, as I have already seen above, throughout the proceedings - including in the Memorandum of Appeal of R.F.A.No.622 of 2010 - the specific stand of the State of Kerala is that Dr.K.B.Venugopal is an experienced ocular

specialist and that he has treated several hundreds of patients without any error in his long career; and have also adopted all the assertions and averments in the written statement of Dr.K.B.Venugopal as being part of their pleadings also.

Interestingly, not merely have they done so, but they have then chosen to cast a vilifying accusation against Smt.Rema Devi that since she did not make any complaint against Dr.K.B.Venugopal or Dr.K.S.Suneethi to the higher Authorities, it must be presumed that she had received necessary and apposite treatment and thus that her pleadings in the suit are false.

71. That said, ineffably, when this matter was heard, the

State took a u-turn and the learned Senior Government Pleader, on their behalf, made oral submissions against Dr.K.B.Venugopal and Dr.K.S.Suneethi, asserting that, since gross negligence and error from their part has been established fully, the State cannot be made vicariously liable for their actions.

72. I am afraid that this can only be seen as a case of brinkmanship on the part of the State of Kerala to avoid the consequences of the vicarious liability legally cast upon them. Since, as stated above, the State has supported

Dr.K.B.Venugopal throughout, and since they have filed R.F.A.No.622 of 2010 clearly with the intent to seek exoneration of the doctors - which is indubitable from the grounds raised - I am drawn to the certain opinion, particularly taking note of his advanced age, that the State should suffer the entire vicarious liability; and consequently, that the impugned judgment to the extent to which it enables recovery from Dr.K.B.Venugopal be not permitted.

In the result:-

(a) R.F.A.No.333 of 2007 and R.F.A.No.622 of 2010 are dismissed.

(b) R.F.A.No.271 of 2007 is allowed in part; with a declaration that the amounts to be paid by the State under this

**judgment will not be recovered from Dr.K.B.Venugopal.**

(c) C.O.(Indigent)No.17 of 2020 is allowed; and thus

O.S.No.410 of 1997 is decreed to the full extent as prayed for in the plaint, to be paid by the State of Kerala to Smt.Rema Devi - the plaintiff, along with interest

@7.5% from the date of suit till the realisation of the amount, along with costs.

(d) The afore amounts will be deposited by the State of

Kerala, after deducting the amounts already remitted by the 5<sup>th</sup> respondent - Insurance Company, within a period of three months from the date of receipt of a copy of this judgment, failing which the plaintiff will be at liberty to recover it as per law.

(e) The plaintiff - Smt.Rema Devi is entitled to costs in all the three appeals.

Finally, since the amounts are directed to be paid by the State of Kerala, I further order that no steps be initiated by them in future against the plaintiff - Smt.Rema Devi to recover the court fees, either in the suit or in the cross objection herein based on the fact that she had been granted leave to prosecute the same in *informa pauperis*.

Sd/- DEVAN RAMACHANDRAN rp JUDGE

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