

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5907 of 2004

Kameshwar Singh son of Late Shiv Gulam Singh, resident of village Krishnapur,
P.O. and P.S. Hilsa, Nalanda

.... Petitioner/s

Versus

1. The Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Department of Health Services, Govt. of Bihar Patna.
3. The Civil Surgeon cum-Chief Medical Officer, Nalanda.
4. The Deputy Superintendent, Sub-Divisional Hospital, Hilsa, Nalanda.
5. The State of Bihar.
6. Dr. Uma Shakar Prasad, Deputy Superintendent, Sub-divisional Hospital, Hilsa, Nalanda.
7. Dr. Balram Prasad, M.O. Sub-divisional Officer, Hilsa, Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. R.K.RAJAN, Adv.

For the State : Mr. Rao Shivaji Nath, AAG-III

For Respondent no.6 : Mr. S. Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-04-2015

Heard counsel for the petitioner and the respondents.

Petitioner is father of Late Manish Kumar who received gun shot injury on 20th June 2001. Thereafter, he was brought to Sub-divisional Hospital, Hilsa. It has been claimed by the petitioner that his son was treated by the Doctors at Hilsa but he was not provided medicine from the hospital, had to purchase medicines from the open market. While he was in the Hospital, he was provided facility of oxygen but when condition of patient deteriorated, he was referred to PMCH, Patna for better treatment.

There was an ambulance attached to the Hospital but was not provided to him. Ultimately the petitioner had taken ambulance on hire from the market. When the son of the petitioner was placed in the ambulance attached oxygen cylinder with mask was taken away on the direction of the Superintendent

of Hospital Request was made to allow the cylinder with mask upto PMCH, Patna on his cost, but in utter disregard, it was taken away, on way to PMCH, at Fatuha, son of the petitioner died.

Thereafter the petitioner approached to the Consumer Court, refused to entertain the application on the ground that it is not the proper forum and, accordingly, the petitioner approached this Court for compensation by filing the present writ petition.

Counsel for the petitioner submits that due to negligence of the Doctor, son of the petitioner died on account of the fact oxygen cylinder was withdrawn on the direction of the Superintendent of the Hospital. He has placed reliance on large number of judgments, such as, AIR 1996 SC 2426 and 2013 SCW 6429 where the Court has said that the criminal case is not maintainable and a civil case is maintainable. He has further relied on (2005)6 SCC 1 and further submitted that the petition under writ jurisdiction is maintainable, he cannot be asked to approach the civil court for redressal of the grievance. He further relied on AIR 1993 SC 1960 and (2000)2 SCC 465.

He has further submitted that for the act of negligence of the agent of the State, person affected should be compensated properly by the State. In that context he has placed reliance on AIR 2013 SC 818.

He has further relied on AIR 2012 SC 2573 and AIR 2012 SC 100.

Respondent no.6 has taken a plea that on the fateful day, he was not at the Hospital, rather he was at Patna. There was only one ambulance attached to the Hospital, that ambulance was sent to the Hospital along with Rameshwar Prasad so much so that there was only one oxygen cylinder which could not be allowed to be taken by the petitioner, looking to the prospective

emergency.

It has further been submitted that proper treatment was given to the son of the petitioner, who was admitted at 10.15 A.M. but looking to his critical condition, he was referred to PMCH, Patna for better treatment and was discharged at 11.40 A.M. itself. He has further submitted that the petitioner had hired ambulance which was properly fitted with all equipments, including oxygen cylinder and mask which is apparent from Para-12 of the writ petition and it was also stated in Para-7 and 8 of the counter affidavit filed by the respondents.

He has submitted that all possible treatment was given to the son of the petitioner and the claim made is not sustainable.

Having considered the rival contention of the parties, it is not in dispute that the son of the petitioner was admitted in the Hospital, there the Doctors attended him, provided proper medicines but when his condition became critical, he was referred to PMCH. With regard to presence of respondent no.6 it has been claimed by the petitioner that he was there but the respondent no.6 has vehemently opposed and has taken this stand in the counter affidavit he was at Patna with respect to some official work. So the claim of the petitioner that at the behest of respondent no.6 the oxygen cylinder and the mask were removed, is a disputed question of fact and cannot be adjudicated in the present case so much so in Para-12 of the writ petition, petitioner himself stated that he had hired an ambulance from the market, it was fitted with all the equipments, including oxygen cylinder and mask, so much so there was only one oxygen cylinder in the Hospital, authority of the Hospital has rightly refused to allow the cylinder to be taken by the petitioner, keeping in view prospective emergent situation.

There is no allegation that the Doctors were not qualified they were not giving proper attention to the son of the petitioner. Only claim has been

made that he was not provided oxygen cylinder and that too in Para 12 of the writ petition and Para-7 and 8 of the counter affidavit, it is clear that the ambulance was fitted with the oxygen cylinder.

In such view of the matter, the petitioner fails to make out a bona fide claim for compensation. Accordingly, this petition is dismissed.

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(Shivaji Pandey, J)