IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18091-2015
Date of Decision: 07.09.2015

Gurmeet Kumari and another

... Petitioner(s)

Versus

Union Territory of Chandigarh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?. YES
2) To be referred to the Reporters or not ?. YES
3) Whether the judgment should be reported in the Digest ? YES

Present: Mr. Pardeep Bajaj, Advocate,
for the petitioners.

Paramjeet Singh, J.

The petitioners have approached this Court under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent Nos.1 to 3 to pay compensation for the death of Radhe Shyam, husband of petitioner No.1 and father of petitioner No.2 which was allegedly caused due to sheer negligence of respondent No.1 to 3, for failure to diagnose a disease, who are jointly and severally liable and further to assess the compensation on the principles laid down in the Motor Vehicles Act.

Brief facts adumbrated in petition are to the effect that petitioner No.1, 27-year old widow has been forced to take the responsibility of her two years and two months minor son and about 57-year old father-in-law due to untimely death of her husband late Radhe

Shyam. The husband of petitioner No.1 was an Architect Engineer and was working in Cyprus with a construction company. He was earning 1,450 GBP per month, approximately ₹18 lacs per annum with an annual increment of 5,000 GBP approximately ₹5 lacs per annum. He had lost his life at the age of 30 years due to highly negligent approach of doctor i.e. Respondent No.3 appointed by the Government, working under direct supervision of respondent Nos.1 and 2. In the year 2012, Radhe Shyam (since deceased) got full fledged work permit to stay in Cyprus and to do a job of Architect Engineer. The marriage of petitioner No.1 was solemnized with Radhe Shyam (since deceased) on 18.02.2012. They were blessed with a baby boy in the month of June, 2013. Radhe Shyam (since deceased) came to India for three months on Christmas Vacations on 24.12.2014. The first Swine Flu case of the year 2015 in Chandigarh was reported to the U.T. Administration and confirmed on 07.01.2015 at MAX Hospital, Mohali. This was reported on *Chandigarhmetro.com* dated 08.01.2015 and the Tribune dated 09.01.2015. Respondent No.2 gave statement to the News Correspondents that the aforesaid news is confirmed and the Administration has set up isolated and highly equipped wards for the treatment of HINI virus affected persons in the Government Hospitals like PGIMER, GMSH-16 and GMCH-32. It is further averred that on 17.02.2015, Radhe Shyam (since deceased) started feeling unwell with complain of sudden high fever, body ache, congestion cough etc. On 18.02.2015, petitioner No.1 took her husband to Emergency Department,

GMSH-16 where her husband disclosed all the symptoms and respondent No.3 checked him. All the symptoms were noted down in the Registration Card (Annexure P-6). Her husband was having fever about 101.3 F, Cough, Body-ache and Congestion. Respondent No.3 being expert in his field, advised her husband clinical test for TLS, DLC, PS for MP, Vidal etc., but did not advise for a test for HINI virus to rule out the possibility of Swine Flu. Her husband got conducted all the advised tests at Chandigarh Diagnostic Centre Lab. The report of tests is annexed herewith as Annexure P-7. Since there was no sign of relief from fever and other problems even after taking the medicines as advised by respondent No.3, petitioner No.1 again took her husband to respondent No.3 on 20.02.2015, who referred him for ENT Opinion and yet no pain was taken on his part just to diagnose husband of petitioner No.1 at least once to rule out the possibility of having been infected by HINI Virus. The situation remained the same and there was no improvement in the health of husband of petitioner No.1. She again took her husband to respondent No.3 on next day i.e. 21.02.2015. This time also, medicines of her husband were changed and no efforts were made to diagnose him for some serious problems. Since the health of her husband got deteriorated even after two days of last advice, she took her husband to the Cheema Medical Complex, Phase-IV, Mohali, SAS Nagar on 22.02.2015 and explained the condition, history of diagnose and medicines given to him at the advice of respondent No.3 at GNSH-16, Chandigarh. At the very outset, the doctors of Cheema Hospital

suspected the husband of petitioner No.1 being suffered from HINI virus. For diagnosis and treatment for HINI virus, if required, her husband was referred to PGIMER, Chandigarh where he was admitted in the special ICU Ward from 22.02.2015 till 02.03.2015 and was treated with best of the treatment, but ultimately the virus had already affected his body so adversely before coming to the PGIMER, therefore, he could not survive with Swine Flu i.e. HINI Virus and ultimately died on 02.03.2015 leaving petitioner No.1 to survive for herself and bringing up her minor son-petitioner No.2 and looking after her old age father-in-law. Perusal of medical certificate (Annexure P-10) shows that immediate cause of death was respiratory failure and antecedent cause is severe acute respiratory distress syndrome HINI related influenza. It is further averred that petitioner No.1 took her husband to GMSH-16 under respondent No.2 for treatment with respondent No.3 on 18.02.2015 but for five days, he was not diagnosed for the Swine Flu NIHI despite all the similar symptoms being reported to them. They showed their negligent approach in not diagnosing her husband with HINI particularly when the city was already in the grip of Swine Flu. Rather, the Cheema Hospital suspected the presence of HINI virus in the body on the very first instance and to rule out the possibility of Swine Flu, they immediately referred the husband of petitioner No.1 to Post Graduate Institute of Medical Education and Research (PGIMER). The cause of death was due to failure of respiratory system being infected by HINI Virus not detected by respondent No.3 at the initial stage of five days to

make it further aggravated. Hence, this writ petition.

I have heard learned counsel for the petitioners and perused the record.

Learned counsel for the petitioners vehemently contended that Radhe Shyam (since deceased) husband of petitioner No.1 was suffering from Swine Flu/HINI virus and came to the hospital-respondent No.2 on 18.02.2015 where he was given treatment by respondent No.3. He further contended that Radhe Shyam (since deceased) had narrated all the symptoms of his disease i.e. high fever, body ache, congestion, cough etc. to respondent No.3 who advised clinical tests for TLS, DLC, PS for MP, Vidal etc., but did not opt for test for HINI virus to rule out the possibility of Swine Flu. The medical treatment of Radhe Shyam (since deceased) was started by giving PCM, pain killer, injections etc., but he did not get any relief. On 20.02.2015, Radhe Shyam (since deceased) was referred for ENT opinion, but there was no change in the medicines. On 21.02.2015, Radhe Shyam (since deceased) was brought to the hospital-respondent but there was no improvement in his health and ultimately, on 22.02.2015, he was taken to Cheema Medical Complex, Phase-IV, Mohali, SAS Nagar, where it was suspected that he was suffering from HINI virus and was referred to PGIMER. Learned counsel further contended that w.e.f. 22.02.2015 till 02.03.2015, Radhe Shyam (since deceased) was treated at PGIMER, but ultimately he expired. As per the medical certificate (Annexure P-10), cause of death was respiratory failure and antecedent cause was severe

acute respiratory distress syndrome- HINI related influenza. He further contended that w.e.f 18.02.2015 till 22.02.2015, respondent No.3 could not diagnose that Radhe Shyam (since deceased) was suffering from Swine Flu/HINI virus in spite of clear symptoms similar to that virus. He further contended that due to death of Radhe Shyam, the petitioners have suffered a heavy loss as he was working as an Architect Engineer in Cyprus with a construction company and was earning 1,450 GBP per month, approximately ₹18 lacs per annum with an annual increment of 5,000 GBP approximately ₹5 lacs per annum. He further contended that hospitals in Chanidgarh were already on alert when first Swine Flu case of the year 2015 in Chandigarh was reported to the U.T. Administration and confirmed on 07.01.2015 at MAX Hospital, Mohali. The aforesaid news was reported on internet Chandigarhmetro.com dated 08.01.2015 and also in the Tribune dated 09.01.2015. In such a situation, respondent No.3 should have considered the symptoms and advised for HINI test and if at the appropriate stage, Radhe Shyam (since deceased) would have been diagnosed properly, his life could have been saved. It is the violation of human rights and, therefore, the petitioners have claimed compensation and made reference to case law ***Rudal Sah vs. State of Bihar and another*** (1983) 4 SCC 141, ***Smt. Nilabeti Behera alias Lalita Behera vs. State of Orissa and others*** (1993) 2 SCC 746, ***Paramjit Kaur and others vs. State of Punjab and others*** 2008(4) R.C.R. (Civil) 772, ***Babli and Another vs. State of Haryana*** 2008(3) R.C.R.(Civil) 717, ***Raman vs. State of Haryana and others*** 2013 (3)

R.C.R.(Criminal) 653, CWP No.13387 of 2010, titled ***Savitri Devi vs. Dakshin Haryana Bijli Vitran Nigam and others,*** decided on 05.03.2014, and ***S.P.S.Rathore vs. State of Haryana*** (2005) 10 SCC 1.

I have given my anxious thoughtful consideration to the contentions of learned counsel for the petitioners.

The legal issues surrounding the negligent/accident claims are complex and demanding. No compensation can replace the ultimate death of a loved one. Every death is a personal tragedy for immediate family left behind. The law does not always lead to justice. However, courts use their skill and experience to achieve the best possible.

Since in the instant petition, compensation has been sought on the ground of alleged negligency of the doctor and hospital, it would be appropriate to discuss about the medical profession. The medical profession is considered as noble profession because it helps in getting rid of the deceased and other health problems and resultantly preserving life. We believe life is God given. It is an old proverb in India that doctor is a “second God on earth”. In other words, doctor is a person after God who has the ability to save the life of people on earth as he/she stands to carry out His Command. A patient generally approaches the doctor/hospital based upon his/its reputation. The expectations of a patient are two fold (i) doctor and the hospital will provide medical treatment with best of knowledge and skill at their command and (ii) he/she will not suffer any harm either because of their negligence, carelessness or reckless attitude of their staff.

The diagnosis is necessary stage before starting the treatment. Misdiagnosis or wrong diagnosis has serious ramifications for a patient. When a patient is clinically examined, there is a possibility of a doctor misdiagnosing the medical condition as a result of fault in source of information or the information provided by the patient.

The perusal of registration card dated 18.02.2015 (Annexure P-6) reveals that symptoms given were cough with fever 101.5 F and on 21.02.2015, when the patient was examined by the ENT Department and another registration card was issued which is annexed at page No.65 of paper-book. On 22.02.2015, Radhe Shyam (since deceased) approached Cheema Medical Complex, Phase-IV, Mohali, SAS Nagar where the doctor suspected Swine Flu and referred the patient to PGIMER (Emergency) to assess Swine Flu. At that point of time, Radhe Shyam (since deceased) had been complaining of fever, cold, body ache and pain epigastrium for 7-8 days.

There is no expert evidence on record that the doctor at GMSH, Sector-16, Chandigarh had misdiagnosed the disease. Both legal and medical complexities are involved in the present case which cannot be determined in writ jurisdiction. Otherwise also, no human being is perfect, even most renowned specialist could make a mistake in detecting or diagnosing the true nature of a disease. It is also true that accurate initial medical diagnosis is foundation upon which all subsequent healthcare decisions are based. An error in diagnosis leads to incorrect treatment/delayed treatment and resultant cascade of

negative events to occur. Even the physicians many times do not know how err-prone they are. According to medical literature, Swine flu/NIHI flu virus is a new strain of influenza and the symptoms of HINI flu in people are similar to the symptoms of regular human seasonal flu infection. They include fever, lethargy (lack of energy), lack of appetite and coughing. Some people with HINI flu report running nose, sore throat, nausea, vomiting and diarrhoea. In the present case, misdiagnosis alone is not sufficient for a claim to succeed. The initial treatment given to the deceased was for flu which may be seasonal. The estimated incubation period for Swine flu is unknown and could range from 1 to 7 days and more likely 1 to 4 days and resolving of symptoms takes time. It is pertinent to mention that the deceased came from Cyprus and may have contacted the alleged disease which has incubation period of 1 to 7 days and the symptoms exactly resemble with seasonal influenza. The symptoms of swine flu and seasonal flu are almost identical. The petitioners have not brought on record the evidence of expert witness to the effect that respondent Nos.2 and 3 did not provide medical treatment with all knowledge and skill at their command. A doctor may not be in a position to save the patients at all times. A doctor is expected to use his special knowledge and skill in the most appropriate manner keeping in view the interest of a patient who comes to the doctor and entrust his life. There is no expert evidence on record that respondent No.3 did not use his knowledge and skill in diagnosing the disease of the deceased. There is no expert evidence to show that death of Radhe Shyam is the

result of doctor's failure to exercise the degree and skill of average doctor for diagnosing the disease. There is also no evidence on record that respondent Nos.2 and 3 were negligent and did not provide treatment in a reasonably skillful and competent manner. In such like claim, it is required to be proved that a doctor in a similar specialty, under similar circumstances would not have misdiagnosed the patient's illness or condition. On the basis of judgments cited by learned counsel for the petitioners, compensation cannot be awarded.

In view of above, I do not find any merit in the present petition.

Dismissed in limine.

However, the petitioners will be at liberty to avail the remedies as may be available to them, including filing of civil suit etc. for compensation, in accordance with law.

07.09.2015 **(Paramjeet Singh)**
parveen kumar **Judge**