

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.67 of 2016 (O&M)

Date of Decision : 09.01.2017

Gurmeet Kumari and another

....Appellants

Versus

Union Territory of Chandigarh and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN**

Present: Mr. Tinku Singh, Advocate for
Mr. Pardeep Bajaj, Advocate
for the appellants.

.....

MAHESH GROVER, J.

CM No.146-LPA of 2016

Delay of 30 days in re-filing the appeal is condoned.

C.M.stands allowed.

LPA No.67 of 2016

Learned counsel appearing for the appellants states
that he has no instructions to argue the case.

We notice that the case has been pending since 28th
March 2016 with absolutely no effort made by the appellants to
argue the case.

This appeal is directed against the judgment of the
learned Single Judge dated 07.09.2015.

The appellants, who were the writ petitioners as well,

prayed before the writ court for grant of compensation on account of death of Radhe Shyam, who was husband of petitioner No.1 and father of petitioner No.2, caused allegedly due to negligence of respondents No.1 to 3 for failure to properly diagnose the disease.

It was averred in the petition that the writ petitioner No.1 was a young girl forced into widowhood due to inefficiency and negligence of respondents no.1 to 3. The deceased was stated to be an Architect Engineer working with a private company earning handsomely but the diagnostic failure led to his untimely demise.

The learned Single Judge noticed that there was no expert evidence on record to establish wrong or improper diagnosis of the disease or for that purpose lack of adequate medical aid. He further went on to conclude that in the absence of expert evidence it would be difficult to conclude medical negligence, particularly in the exercise of writ jurisdiction fettering such a course in view of conflicting facts. The ailment and demise of the deceased was attributed to Swine flu/NIHI flu virus but since no evidence was brought about to establish medical negligence, the writ petition was dismissed with liberty to the appellants to avail remedies as may be available to them, including filing of civil suit for compensation.

We find no infirmity in the findings recorded by the learned Single Judge who has rightly dismissed the writ petition by observing that in the absence of expert evidence the plea of compensation on account of negligence or lack of diagnosis could not be accepted. We would, however, while dismissing the instant appeal only add to the observations of the learned Single Judge that dismissal of writ petition or anything said in the order would not come in the way of the appellants in the eventuality of their seeking remedies in law.

Appeal dismissed.

(MAHESH GROVER)
JUDGE

09.01.2017
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No