

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

FAO No.6305 of 2014 (O&M)

Date of decision: 15.03.2018

Smt. Samina and others

... Appellants

Versus

Barkat and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashish Gupta, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 08.02.2013 whereby compensation has been awarded to the tune of Rs.20,000/- namely Rs.10,000/- on medicines, special diet and transportation and another Rs.10,000/- on account of pain and sufferings.

Counsel for the appellants would argue that as Shakeel died due to injuries sustained in accident that took place on 10.09.2010, claimants are entitled to compensation with regard to loss of dependency and under conventional heads qua death of Shakeel. To bring home his contention, he has referred to testimony of Dr. Pardeep Soni PW5.

Counsel representing the insurance company has supported findings of the Tribunal recorded in para 15 whereby plea of the claimants

that Shakeel died due to injuries sustained in the occurrence has been rejected and compensation has been awarded only in respect of injuries sustained by the victim.

I have heard counsel for the parties, perused the paper book and records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to take note of observations made by the Tribunal in para 15 of the award, quoted thus:-

“It is the admission of the petitioners that the deceased met with an accident on 10.09.2010 and he died on 05.12.2010. It is proved on file that in the accident, the deceased sustained two fractures and this fact is proved from the perusal of x-ray report Ex.P14. It also came in evidence that thereafter the deceased got desi treatment. It was the duty of the petitioners to prove by producing cogent and convincing evidence that the death of deceased was caused because of the injuries sustained by him in the accident. It is the admission of PW1 in his cross examination that the post mortem examination of the deceased was not conducted. In the absence of post mortem examination the cause of death of deceased is not proved. PW5 Dr. Pardeep Soni has deposed that the deceased was brought to hospital in hepatic failure. But in the cross examination he deposed that the treatment to the deceased was given by Dr. Tyab Khan. Meaning thereby PW5 Dr. Pardeep Soni was not conversant with the disease of the deceased. Dr. Tyab Khan was the most material witness to prove the fact how the death of deceased occurred.”

Indisputably, there is no medical evidence with regard to treatment of Shakeel except document Ex.P14 in respect of injuries sustained by him on 10.09.2010. Perusal of x-ray report Ex.P14 would make it manifest that the victim sustained two fractures one on lower end of femur and other on 4th metacarpal bone, detailed hereunder:-

*“Fracture lower end of femur
Fracture 4th metacarpal bone”*

As the claimants did not adduce evidence with regard to initial treatment of the injured in respect of two fractures noticed in x-ray report much less that the injured did not recover from the said condition or it led to further complication, claimants cannot derive much mileage from the testimony of Dr. Pardeep Soni PW5 who was not even the treating doctor of Shakeel when he was admitted in Sania Hospital, Alwar on 29.11.2010 and discharged on 05.12.2010. However, Dr. Pardeep Soni in his examination-in-chief has stated that the patient was HBSAG positive. Patient came to them in hepatic failure. Such type of patient may be caught by other complications if lying on bed long time like this one. In his cross-examination, he has admitted that treatment to the patient was given by Dr. Tyab Khan and he was authorised by Dr. Tyab Khan to give evidence on his behalf as he was assisted by him.

There is nothing in the statement of Dr. Pardeep Soni that medical condition of Shakeel noticed at the time of his admission in the hospital on 29.11.2010 has a remote much less close nexus with the injuries

sustained by him in the motor vehicular accident that took place on 10.09.2010. Counsel for the claimants has not referred to any medical text that condition of the patient noticed at the time of admission on 29.11.2010 can possibly be caused due to sustaining of fracture lower end of femur and fracture 4th metacarpal bone. In the given circumstances, I do not find any reason to differ with the findings recorded by the Tribunal that claimants have failed to establish nexus between the injuries sustained in the accident and death. I would hasten to add that the claimants have not produced postmortem examination, if any, conducted to know cause of death of the deceased. In this view of the matter, the Tribunal has rightly rejected claim of the appellants for grant of compensation in respect of death of Shakeel.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

15.03.2018

ashok

(REKHA MITTAL)
JUDGE

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