

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-10470-2019 (O&M)
Date of Decision: 23.07.2019

M/s Aditya Neuro and Spine Speciality
Hospital & Trauma Centre & another

--Petitioners

Versus

The Presiding Officer & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashish Chaudhary, Advocate for the petitioners.

TEJINDER SINGH DHINDSA.J (Oral)

The instant writ petition is directed against the order dated 23.1.2019 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Rewari and in terms of which the petitioners herein have been directed to refund a sum of Rs.1,20,000/- to respondents no.2 and 3 i.e. the medical charges/treatment cost that had been incurred towards patient Deepak (since deceased).

Counsel would submit that on 4.4.2015 a patient namely Deepak Kumar son of Sh. Roshan Lal aged 28 years was admitted in petitioner no.1 hospital at 8.35 A.M with a history of road traffic accident. The patient was brought in an unconscious condition and having a severe head injury. The attendant happened to be Mr. Ashok Saini brother-in-law of the patient. It is submitted that the attendant was immediately informed that the patient be taken to Civil Hospital, Rewari for medicolegal examination. However, the attendant is stated to have refused and given a letter in such regard to the petitioner hospital that the accident is not due to the fault of any person and the family of the patient does not wish to get any MLR/FIR either in the present or in future. Despite treatment having been afforded at the petitioner no.1 hospital, the patient could not survive and he

expired on 6.4.2015 at about 3.30 A.M.

Parents of Deepak i.e. respondents no.2 and 3 herein preferred an application under Section 22-C of the Legal Service Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Rewari with a prayer to be awarded a sum of Rs.10 lakh as compensation on account of death of their son Deepak Kumar. Such application has led to the passing of the impugned award dated 23.1.2019 at Annexure P-1.

Counsel has argued that the impugned award cannot sustain as it was the attendant of the patient who insisted not to send any *Ruqa* to the concerned police station or to get any MLR examination. Attendant of the patient Ashok Saini had even submitted the same in writing vide letter dated 4.4.2015 (Annexure P-2). It is urged that such factual position has not been considered by the Permanent Lok Adalat. Further argued that petitioner no.2 had treated the patient with due care and diligence as per standard medical norms and all facilities available at the petitioner no.1 hospital had been offered. No finding of negligence or deficiency in services on the part of the petitioner has been recorded and yet a refund of Rs.1,20,000/- has been directed. Yet another submission raised by counsel is that it was always open for the attendant of the patient to lodge any complaint or FIR even during the course of treatment of the patient when he had been admitted with petitioner no.1 hospital. Further contended that the parents of the patient i.e. respondents no.2 and 3, even after the death of their son Deepak were at liberty to go to the Civil Hospital, Rewari to get the post mortem examination on the body of the deceased. Precise argument raised is that no blame can be attributed to the petitioners for information regarding admission of the patient having not been furnished to the police

authorities and for the post mortem examination on the body of the deceased having not been conducted. One last submission raised by counsel is that the petitioners had followed the provisions of the Haryana Medico Legal Manual, 2012 whereunder as per clause 34 the first and foremost duty of the Medical Officer is to treat and save life of the patient and everything else is secondary. It is urged that in the present case the patient having been brought with a severe head injury, the focus of the hospital authorities as also petitioner no.2 was to afford immediate and necessary treatment and under such circumstances the award passed by the Permanent Lok Adalat to refund the amount paid towards medical/treatment charges is unduly harsh and unjust.

Counsel for the petitioners has been heard and the pleadings on record have been perused.

For the issue at hand it would be imperative to have an overview of the Haryana Medico Legal Manual, 2012 prepared by the Health Department, Haryana in consultation with the office of the Director General of Police, Haryana, Department of Forensic Medicines, P.G.I.M.E.R, Chandigarh and P.G.I.M.S, Rohtak (herein after to be referred to as the Manual). Preamble of the Manual makes it clear that the provisions contained therein shall be binding on all doctors as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 practicing in the State of Haryana. All medico legal examination in the State of Haryana shall be governed by such Manual. Chapter I of the Manual contains general guidelines. Clause 2 defines the category of cases admitted in a hospital and which are to be treated amongst others as medico legal cases. Clause 2.3 relates to cases of injuries due to traffic accidents even

when an accident had occurred due to patient's mistake and nobody else is to be blamed. Even such category is to be treated as a medico legal case. As per clause 3 contained in Chapter I whenever a suspected medico legal case is brought in the emergency of a hospital, it shall be duty of the Medical Officer on duty to send information to the Police Station/Police Post of the area in Form-I in triplicate. Such information is to be sent to the police by the quickest possible means. Acknowledgement from the police officer receiving the information is to be kept in the file of the patient. Under clause 4 the Medical Officer concerned is obligated to make a note in the file of the patient as to the time and date of informing the police. He is also to make a complete record of all the injuries and also note the date and time of the admission of the patient. Name and address(es) of the attendant (s), who brought the patient should also be recorded in the file. Under clause 4 the Medical Officer is to mark with red pen on the top of first page of the file of the patient the letters "M.L.C" or put the stamp "Medicolegal case". Clause 11 defines the procedure in the case of death of a medicolegal case. The same is reproduced hereunder:-

"11. Death of medico legal case.

Whenever a medicolegal case dies, the police officer I/C of the police post/police station of the area should be informed immediately in Form-I and a note to the effect be recorded on the file of the deceased. When the body of a medicolegal case is sent to the mortuary, clear instructions should be given to the mortuary attendant, not to hand over the body to the relatives without post mortem. Complete chain of custody of the dead body shall be maintained at all times until the time the body is finely handed over to the relatives of the deceased. The body shall be transported to the mortuary. Name of the ward attendant or any other employee/ police staff transporting the

dead body shall be recorded in the file or in the OPD register. Once the information is received by the police and the police official has arrived at the hospital, he shall be responsible along with the hospital staff for the safety of the dead body. It shall be ensured that samples remain intact, shall not be tempered at all times. Death certificate should not be issued in Medico-legal cases by the doctor conducting the Post-Mortem examination. Only the Hospital registry should do so.”

Under clause 23 the consent or permission of the relatives is not required for conducting a medicolegal post mortem examination. Clause 34 lays down that the first and foremost duty of the Medical Officer is to treat and save the life of the patient. Everything else is secondary. Information to the police be sent as soon as possible but under no circumstances, the treatment should be delayed because of the non-arrival of the police.

A conjoint reading of the relevant clauses of the Manual referred to herein above would leave no matter of doubt that the admission of Deepak Kumar (since deceased) was a medicolegal case. Rather it is the pleaded case of the petitioners themselves that they had informed the attendant that being a medicolegal case, the patient be taken to Civil Hospital, Rewari. Heavy reliance has been placed upon the writing dated 4.4.2015 (Annexure P-2) given by the attendant i.e. brother-in-law of the deceased that he does not want to lodge any FIR or to get the M.L.R done. Even if that be so, petitioner no.1 hospital as also petitioner no.2 doctor were not absolved of their obligation and duty as per provisions of the Manual. Undoubtedly as per clause 34 immediate treatment to the patient was the first concern. Yet information ought to have been sent by the petitioners to the concerned police authorities. They failed to do so. Under

clause 11 relating to death of a medicolegal case, the police officer incharge of the police post/police station of the area is to be informed immediately and a note to such effect is to be recorded on the file of the deceased. The body of a medicolegal case is to be removed to the mortuary and is not to be handed over to the relatives of the deceased without a post mortem. The submission raised by counsel that there was no post mortem facilities at the private hospital and such procedure was to be conducted only at the Civil Hospital, Rewari, is irrelevant. Onus was upon the petitioners to have informed the police authorities concerned immediately upon the death of the patient namely Deepak Kumar being a medicolegal case. This would have facilitated the removal of the body to the Civil Hospital concerned for conduct of a post mortem examination. The petitioners have failed on such count as well. Needless to observe that the parents of the deceased (respondents no.2 and 3 herein) have been seriously prejudiced for purposes of filing a claim petition under the Motor Vehicles Act seeking compensation in the absence of the FIR as also a post mortem examination.

It may be noticed that the Permanent Lok Adalat vide the impugned award has directed refund of the medical treatment charges of Rs.1,20,000/- not on account of medical negligence but due to non-adherence to the provisions contained under the Haryana Medico Legal Manual, 2012. This Court would not be inclined to take a different view in the matter.

No merit, petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

23.07.2019

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No