

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

**RSA No.2330 of 2006**

**Date of Decision:11.02.2019**

Smt. Kamlesh Rani and others

...Appellant(s)

**Versus**

State of Haryana and another

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr.Rakesh Gupta, Advocate for the appellants.  
Mr.Saurabh Girdhar, AAG, Haryana.

**ANIL KSHETARPAL, J.**

The plaintiffs-appellants are in the Regular Second Appeal against the judgment passed by the learned first appellate court, reversing the judgment of the trial Court, resulting in dismissal of the suit filed by the plaintiffs for recovery of damages as compensation amounting to Rs.2,58,000/-.

In the present case, the plaintiffs, heirs of late Sh. Ramesh Kumar who died in a Civil Hospital on 24.11.1990, are seeking damages by asserting that late Sh. Ramesh Kumar died due to medical negligence of the Doctors at Civil Hospital, Kaithal.

At the time of admission of the appeal, following substantial questions of law were framed:-

- (i)Whether the appellant being an ordinary layman is required to prove negligence as is required in the criminal case?
- (ii)Whether the damages to be awarded not sought are required to be ascertained on the basis of probabilities and

preponderance of the evidence?

(iii) Whether there is a gross mis-appreciation of the facts by the learned Lower Appellate Court?

Late Sh. Ramesh Kumar was admitted in the Civil Hospital, Kaithal on 20.11.1990. He was examined and opinion of the Dental Surgeon was sought as he was having inflammation of lower jaw. He was prima facie diagnosed with Pneumonitis with Submandibular Inflection. He was referred for incision and drainage of pus. Accordingly, pus was extracted from submandibular area. In the present case, initially, Doctors suspected to be a case of Tuberculosis. Dr. V.S. Dhaka, who was a Physician, examined the patient on 21.11.1990 and the patient was diagnosed to be suffering from jaundice. X-ray of chest was advised which revealed that there is pus in the chest of the patient. The fluid was detected in the pleural cavity. On 22.11.1990, aspiration by needle was carried out by Dr. V.S. Dhaka and he extracted yellow fluid 600 ml approximately. Thick pus was found. Such procedure is called needle aspiration. Since, Pathologist was not immediately available in the Hospital, therefore, pus was sent to the Laboratory outside the Civil Hospital for examination. On 23.11.1990, the bed head ticket reveals that various Doctors were consulted including a Dental Surgeon, Dr. A.K. Mittal-Surgeon and Dr. Jindal. Everyone opined on the basis of prima facie examination and suspected it to be a case of Tuberculosis. On 24.11.1990, at 4:30 PM, Dr. V.S. Dhaka again carried out second needle aspiration and 250 ml of pus of earthen colour was drained, however, blood started coming out and the procedure was stopped.

Thereafter, the patient became serious. Various Doctors were called and Dr. Mittal, a Surgeon, examined the patient at 6:00 PM who

advised immediate x-ray but x-ray could not be conducted due to blood. Dr. Mittal records that the patient is probably bleeding in right thoracic cavity pleural paracentrum again tried and blood came out.

Now, in these facts, question is “whether the plaintiff is entitled to compensation on account of medical negligence or not?”

Learned first appellate court after re-appreciating the evidence have recorded cogent reasons to reverse the judgment of the trial Court. No doubt, sometime the Court feels that what is the fault of the patient or his heirs who have lost their bread earner. However, on such emotions the Court is not expected to pass a judgment.

In the present case, plaintiffs have sought compensation on account of two assertions:-

- 1) Dr. Dhaka was only a Physician and he was not competent to carry out second needle aspiration.
- 2) Dr. Dhaka carried out second needle aspiration without waiting for report from the Laboratory.

Dr. Dhaka is MBBS, MD in Medicine having 15 years experience in Government service. None of the Doctors who have been examined in the Court have stated that Dr. V.S. Dhaka was not competent to carry out second needle aspiration. In fact, evidence has come that it all depends upon the condition of the patient and re-accumulation of the pus which was required to be drained out. From the laboratory also, report has come that on the detailed analysis of the pus extracted, proved presence of dreaded organism which was having significant growth as admitted by Dr. M.R. Mittal-Doctor from the private laboratory where pus was got examined by the appellants.

As regards the study material which has been brought from reputed author, it is apparent that keeping in view the condition of the patient, it is permissible for a Medical Specialist to take a call as to whether repeated needle aspiration is required or not. Learned counsel for the appellant laid much emphasis on the fact that the second needle aspiration should have been done only by the Surgeon. The study material does not support that submission. Still further, as noted above, in the bed head ticket, consultation with various other Doctors including Surgeon has been noted in the noting dated 23.11.1990.

In view thereof, this Court finds that finding on the medical negligence of the Doctor cannot be arrived at in the facts and circumstances of the present case.

Now let us answer the questions which have been framed.

With regard to question No.1, no doubt standard of proof required for proving negligence in Civil Court is not the same as in the criminal case. However, the finding on the negligence cannot be recorded only on the basis of inferences and assumptions. The civil suits are to be decided on the basis of preponderance of evidence and there is difference between standard of proof required for proving negligence in a civil and criminal case. However, even on preponderance of evidence, no case for recording a finding that Dr. V.S. Dhaka was negligent is made out.

As regards question No.2, the discussion has already been made and the answer is against the appellants.

As regards question No.3, it may be noted that on re-appreciation of the evidence, this Court does not find that there has been mis-appreciation of the facts by the learned first appellate court.

In view of the aforesaid discussion, there is no ground to interfere with the findings of fact arrived at by the learned first appellate court. Hence, the appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

**11.02.2019**  
**mks**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No