2024:PHHC:006446

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

204

CWP-9363-2016 (O&M)
Date of decision: 18.01.2024

Dr. Hardeep Singh Aulakh

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Sahil Khunger, Advocate for the petitioner.

Mr. Swaran Singh Tiwana, Advocate
for respondents No.2 and 3.

Mr. Rajneesh Malhotra, Advocate for respondent No.5.

*****

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the Award dated 31.03.2016 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib, vide which the application preferred by respondents No.3 and 4 under Section 22-C of the Legal Services Authority Act, 1987 had been allowed.

2. Counsel for the petitioner contends that the petitioner is a Doctor by profession and is running a Children Hospital under the name and style of Aulakh Children Hospital at Sirhind, District Fatehgarh Sahib. It is contended that respondent No.2 and 3 are the husband and wife while respondent No.4 is their minor son. He was born on 02.02.2015 at 1.45 a.m.

in Mahesh Hospital, Sirhind, Tehsil and District Fatehgarh Sahib. Since it was a premature delivery, the minor son started facing difficulty in breathing after some time. The Doctor at Mahesh Hospital, Sirhind advised respondents No.2 and 3 to consult a child specialist. Respondent No.4 was hence brought to Aulakh Children Hospital, Sirhind on 02.02.2015 at about 9.30 a.m. The petitioner advised respondents No.2 and 3 to admit the child. He was kept in a radiant heat warmer and a cannula was inserted on the left hand of respondent No.4. He was treated with life saving Oxygen and I.V. fluids failing which respondent No.4 would have succumbed to his illness and other complications arising of pre-mature delivery.

3. It is further contended that all aseptic precautions were taken during the treatment of respondent No.4. The septic screen was negative. The condition of respondent No.4 improved and the respiratory distress settled. On 05.02.2015, the cannula was changed at 1.30 a.m. and fixed on the right hand of respondent No.4. The serum bilirubin was increased to 10.8 mg/dl. per day on 06.02.2015. Even though, respondents No.2 and 3 were advised to continue the treatment, however, they wanted to get respondent No.4 discharged from the hospital as the child started accepting oral food and they left the hospital against medical advice. On 08.02.2015, the child was brought back on a complaint of pus filled vesicles over face and behind left ear for which topical *bactroban* as advised by the petitioner. The dosages of the medicine were also increased. The Child was advised to be re-admitted, however, the respondents No.2 and 3 refused for the same. On the next date i.e. 09.02.2015, the child was brought again for check-up. The

child was although taking oral food but bilirubin increased to 15.2 mg/dl., which was an emergent situation. The child was readmitted for phototherapy. The child refused food and swelling coupled with bluish discoloration at the proximal portion of ring finger was noticed. Despite regular checkup the infection did not subside, the petitioner hence considered it appropriate that respondent No. 4-child be shifted either to PGI Chandigarh or to any other private hospital, whereupon respondents No.2 and 3 brought him to Cosmo Hospital, Mohali.

4. The petitioner claims to have extended all the medical treatment as per medical protocol, diligently, prudently and with utmost due care and caution and there was no negligence. Thereafter, the child remained under treatment till 10.02.2015 in Cosmo Hospital, Mohali from 2.30 a.m. to 9.30 a.m. Because of expensive treatment, respondents No.2 and 3 decided to take the child to PGI Chandigarh and got him admitted there on 10.02.2015. By that time the child had developed gangrene on his right hand's ring finger. The same had to be amputated by the Doctors of PGI and the child was thereafter discharged on 24.02.2015 after having been stabilized. Despite best medical practices followed by the petitioner, respondents No.2 to 4 preferred an application before Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib bearing application No.2320 of 2015 under Section 22-C of the Legal Services Authorities Act, 1987 alleging medical negligence on the part of the petitioner.

5. The petitioner had put forth his submissions and also pointed out that he was not negligent and there was no evidence to support the same

and hence could not be held accountable for any complications which respondent No.4 suffered. The same were merely because of premature delivery and respondents No.2 and 3 having taken away respondent No.4 against medical advice. Respondent No.4 developed sepsis only thereafter and the same was because of improper care, failure to take precautions and non-following of the medical advice by respondents No.2 and 3.

6. Since the question of medical negligence as alleged by the applicant-respondents was disputed by the petitioner, the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib initiated steps for exploring the possibility of amicable settlement.

7. On failure of the conciliation proceedings to culminate into an amicable settlement, an adjudication was initiated by the Permanent Lok Adalat (Public Utility Services) and vide award dated 31.03.2016, the Permanent Lok Adalat (Public Utility Services) held that respondent No.4 is entitled to claim medical expenses from the petitioner to the tune of Rs.1 lakh along with Rs.1 lakh towards compensation for harassment and Rs. 3 lakh on account of loss and injury on account of amputation of the finger. Thus, total amount of Rs.5 lakh was awarded to the respondents. Aggrieved whereof, the present petition has been filed.

8. Counsel for the petitioner has further argued that the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib committed an error in adjudicating the issue in a summary manner, notwithstanding that the dispute required leading of evidence and establishing negligence. It is contended that no finding was however recorded by the Permanent Lok

Adalat (Public Utility Services) with respect to any negligence committed by the petitioner and as to how the medical treatment, care or assistance extended to respondent No.4 was inappropriate or improper. He further contends that failure to examine the said issue would vitiate the award of Permanent Lok Adalat (Public Utility Services) for want of proper appreciation of evidence and absence of any record to establish negligence for which the claim has been awarded.

9. The counsel for the petitioner was also supported in his arguments by learned counsel appearing on behalf of respondent No.5 i.e. the United India Insurance Company Ltd. from whom the petitioner had obtained a Professional Indemnity Policy valid from 03.05.2014 to 02.05.2015.

10. The arguments of the petitioner were, however, controverted by the learned counsel appearing on behalf of contesting respondents No.2 and 3. It is contended that the child after the premature delivery, experienced breathlessness whereupon the Doctors of Mahesh Hospital advised for consultation with a child specialist. Hence, the child was brought to the Aulakh Children Hospital, Sirhind where he was admitted on the same day i.e. 02.02.2015 itself. The cannula was fixed on the upper side of ring finger of the right hand of the child for giving glucose and medicines and was kept under treatment upto 09.02.2015 by the petitioner. The condition of the child, however, became serious and there was swelling on the right hand leading to blackness. It was then advised by the petitioner to take the child to Cosmo Hospital, Phase 8, Mohali. The said hospital also admitted the

child and claimed that the cost of medical treatment of the child would be approximately of Rs.5 lakh and there was no guarantee of health of the child. Respondents No.2 and 3 immediately brought the child to PGI Chandigarh, after taking discharge from the Cosmo Hospital, Mohali. The Doctors of PGI Chandigarh told respondents-applicant that the child is suffering from gangrene on the ring finger of right hand and Apnea thus, the life of the child is in serious condition. The Doctors of the PGI Chandigarh also advised that the said finger would be required to be amputated for saving the child and started the treatment of the child. The condition of the child improved day by day, after the right hand's ring finger of the child had been amputated. The child was eventually discharged by the PGI on 24.02.2015. The Doctors of PGI had opined that child had suffered from gangrene on the ring finger of the right hand and had developed Apnea and sepsis when the child remained admitted at Aulakh Children Hospital, Sirhind. The medical opinion and case summary of the child was also adduced before the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib. It is contended that the Doctors at Aulakh Children Hospital, Sirhind i.e. petitioner's herein did not remove the cannula from the right hand of the child and had affixed the said cannula at a wrong place leading to sepsis and development of gangrin thus, culminating into the amputation of the said finger. The future career prospect of the child has been severely barred and is left with an indelible and irreparable permanent physical disability. A sum of Rs.1.50 lakh is stated to have been incurred by the respondents towards medical expenses, transportation, boarding, lodging and other

expenses. It is contended that the award was passed by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib after taking into consideration all the evidence and the surrounding circumstances. It is further contended that all the objections of the petitioner were duly considered by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib and a final award was passed being guided by the provisions of Section 22-D of the Legal Service Act, 1987.

11. The undisputed facts which emerge from a consideration of the pleadings is that the respondent No.4-Child was born on 02.02.2015 and was admitted at Aulakh Children Hospital, Sirhind on account of complaint of breathlessness. It is also not in dispute that a cannula was fixed near the ring finger of the right hand of the child by the Doctors at Aulakh Children Hospital, Sirhind for extending treatment and administering fluids etc. It is further evident that the child developed complications including swelling and blackness of the hand. The cannula in question had not been removed by the Doctors at Aulakh Children Hospital, Sirhind at the time when the child was discharged which seemingly caused swelling and the consequential medical complications. The Doctors at PGI Chandigarh had opined the cause of the septicemia to be the improper care and treatment at Aulakh Children Hospital, Sirhind/wrong installation of the cannula at the time of administering initial medical treatment and non-removal thereof. It is further not in dispute that the child remained under treatment at petitioner's hospital only before being diagnosed by the PGI for gangrene leading to amputation. Once the child was under the care and medical treatment of the

petitioner's hospital, the obligation for ensuring that the child does not suffer from any infection/septicemia is upon the hospital. The very fact that such a problem has occurred which would not have happened in the ordinary course and had no co-relation to premature delivery, established medical negligence.

12. I have heard learned counsel representing the respective parties and have gone through the documents relied upon by them respectively.

13. Even though an emphasis has been laid by the counsel for the petitioner that a pre-born child is susceptible to various ailments, however, there is nothing on record to co-relate that a premature child is highly susceptible to suffering from gangrene. The above said disease is not prone to premature delivery but owes its origin to the cannula that had been affixed on the right hand of the child near the finger. The insertion of the cannula and the non-removal thereof at the time of discharge of the child are the acts/omissions attributable solely to the petitioner. The consequential amputation of the ring finger of the right hand of the child has a direct co-relation of acts/omissions of the petitioner's hospital itself.

14. The second emphasis of the petitioner that in a separate criminal proceeding, the case against the petitioner stands closed, in my view, it would not lend any further defence to the petitioner. The criminal proceedings are examined and adjudicated on a very different jurisprudence and the burden of proof on prosecution is that of establishing the case beyond reasonable doubt. On the other hand the proceedings in civil law are based upon preponderance of probabilities. The burden of proof being very

different is summary civil proceedings as compared to initiation/pursuing of criminal proceedings, any finding of acquittal by a Criminal Court in a criminal proceeding has no binding effect on the proceedings before the Civil Courts. Still further, the proceedings before the Permanent Lok Adalat (Public Utility Services) are governed by the Legal Services Authority Act, 1987. As per Section 22-D of the Legal Services Authority Act, 1987, the Permanent Lok Adalat (Public Utility Services) is to be guided by the principles of natural justice, objectivity, fairness, equity and other principles of justice. It is further prescribed that the provisions of CPC and/or the Evidence Act, 1872 are not applicable to the proceedings before the Permanent Lok Adalat (Public Utility Services). Hence, the burden of proof and the mode of proof as required to be discharged in civil proceedings, would not be applicable herein and the matter has to be decided by the Permanent Lok Adalat (Public Utility Services) under the Legal Services Authority Act, 1987 under the above guiding principles.

15. Further, while dealing with the arguments advanced by the learned counsel for the parties, the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib recorded as under:

> *"**20.** We have considered the arguments raised on behalf of both the parties.*
>
> ***21.** Admitted facts are that the applicant no.3 was referred to respondent No.1 Dr. as well as the hospital on 2.2.15 at 9:30 am. The child was premature (33 weeks + 4 days) and has breathing problem. The respondent no. 1 treated the child and cannula was fixed on the left hand and he was treated and life*

saving oxygen and I.V fluids etc. was given to applicant no. 3. All investigations were done. Septic screen was negative.

22. As per respondent No.1 the applicants no. l and 2 got him discharged from the hospital on 6.2.15 at 4 p.m. On 5.2.15 the cannula was fixed on the right hand finger and that was not removed even at the time of discharge and it was left in its position by the respondent No.1 so that the baby might need further I.V treatment. On 8.2.15 the applicant no. 3 was brought back again to respondent no. 1 and on 9.2.15 he was again brought and was readmitted in respondent no.1 hospital by respondent no.1 Dr. and as per the admission of the respondent no.1 the child was accepting feed but later on the applicant no. 3 refused to take feed. The applicant no.3 was investigated for sepsis and cannula over the right hand was removed and the applicant Mo.3 was referred to Cosmo Hospital Mohali and thereafter he was taken to P.G.I.

23. The respondent No.1 has not placed on record any document or investigation report showing that the applicant No. 3 was investigated for sepsis. The fact remains that due to the fixing of cannula which was hot removed at the time of discharge, the swelling appeared and the approximal portion of right ring finger developed gangerene. The case summary of the PGI is Ex. A2 and the case summary Ex.A2 shows that after physical examination gangerene of right ring finger was noticed. Resultantly the right ring finger of the applicant no. 3 was amputated.

24. The stand of respondent no.1 in the pleading as well as in the written arguments is that the applicants no.1 and 2 have taken the applicant no. 3 to their home and due to infection at home the gangerene developed but when the applicant no.3 was

brought to respondent no.1 at that time respondent no.1 has nowhere mentioned that the applicant no.3 has developed gangrene due to infection at house. It was primarily because of the fixation of the cannula on the right hand right finger which should have been removed at the time of discharge but the respondent no.1 did not do so and the reason given that it is to be used for giving I.V fluids is without any basis because applicants no.1 and 2 themselves could not give the I.V fluids etc. to the applicant no.3 at their house and it was due to the negligence of respondent No.1 doctor, the cannula remained fixed in the above finger and that lead to the development of gangrene. There is no investigation on record which shows any sepsis or infection of right hand ring finger prior to bringing the applicant no.3 to respondent no.1 doctor as well as hospital.

25. *The respondent No.1 has placed on record copies of his own qualification and having Life Membership of various academics but that does not exonerate respondent No.1 doctor from taking due care and caution which is expected from an experienced doctor. The respondent no.1 has placed on file the literature regarding the development of gangrene in new born premature baby Ex. R12. The perusal of this medical literature shows that the child can develop the gangene. The literature explains that the upper limbs can develop gangrene. The sepsis can lead to gangrene but in the present case there was no investigation that applicant no. 3 developed sepsis which lead to the gangrene. As discussed above in the present case there is no report on record to prove development of sepsis due to prematurity. The entire readings of the literature of studies of various periods go to show the the upper limbs are prone to gangrene than the lower*

limbs In the present case the gangrene has not developed because of the prematurity of the applicant no.3 but it has developed only on the finger in which cannula was fixed due to the negligency of respondent no.1 doctor as the same was not removed and applicant no.3 was discharged along with the cannula fixed on the right hard ring linger and that led to the development of gangrene and ultimately the amputation of the right hand ring finger became imminent and ultimately the said finger was amputated and the applicant no. 3 became handicapped through out his life. The respondent no.1 has not taken the due care and caution as expected from the medical professional and he is guilty of medical negligence in treating applicant no.3.

26. Applicant no. 3 is minor and applicant no.2 is his mother and natural guardian and the applicant no. 1 is the father of applicant no. 3. The applicant no. 3 through his mother applicant no. 2 natural guardian is entitled to claim medical expenses, compensation for negligence and harassment as well as for amputation of the right hand ring finger from the respondent no. 1. Respondent no.1 is insured with respondent no.2 as per professional indemnity Ex. R13 and both the respondents are liable to pay the same to the applicant no. 3 through applicant No.2.

27. So far quantum is concerned the applicant no. 3 was treated by respondent No.1 and was admitted in respondent No.1 hospital and he was referred to Cosmo Hospital Mohali and then to P.G.I. In these circumstances applicant no.3 is entitled to claim medical expenses from the respondents to the tune of Rs. 1 lac, compensation for harassment to the tune of Rs.1 lac and the application No.3 has became handicapped through out his life, although no amount of money can

compensate the loss suffered by applicant No.3 as he will not be able to do any work properly through out his life. Yet the compensation of Rs. 3 lacs for the loss of the limb was suffice. xxx"

16. It is evident from a perusal of the above said award passed by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib that all contentions raised by the petitioner were taken into account before recording a finding against the petitioner and it took into account the case summary of PGI Chandigarh which is Ex. A-2. A specific finding of fact has also been recorded that the cannula was not removed at the time of discharge of the child and that the swelling and blackening of the right hand's finger leading to development of gangrene appeared later in point of time and is a consequence thereof. The contention of the petitioner that the infection might have been developed at home was also disbelieved by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib by specifically referring to the fact that when the child was brought before the hospital on 08.02.2015 for a follow up treatment, no such observation is recorded by the Doctor in the patient summary/medical summary and thus, it cannot be presumed that merely because the child was taken home during the course of treatment, the said child invariably developed an infection on account thereof. In any case, the suggestion of the petitioner can at best be construed as one of the remote possibility but would not annul the conclusions drawn and the possibility of the child having developed gangrene as a result of the cannula having not been removed also cannot be ruled out. The conclusions

drawn by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib cannot be held to be without any basis or no evidence or suffer from illegality or perversity.

17. A High Court, in exercise of its powers of judicial review under Article 226 of the Constitution of India does not sit in a Court of appeal against awards passed and would not ordinarily substitute its views for the view adopted by the subordinate authority/Court. Unless, the opinion/decision taken by the subordinate Court suffers from an illegality, impropriety, perversity or complete disregard to the evidence and leading to the unsustainable conclusion, substitution of such an opinion, merely because any other opinion is also possible is not advisable. Exercise of discretion by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib is based on possibilities, probabilities and *prima* facie reflection of medical negligence on the part of the petitioner. The said conclusion is a possible conclusion which flows from the facts and circumstance of present case. Further, once the applicant discharged the primary onus of medical negligence, under the given circumstances, the burden shifted on the petitioner to establish that the complication could not have occurred due to acts/omissions on the part of petitioner. He has failed to refer to any such material or evidence. The case of the respondent thus cannot be set aside merely on a probable inference.

18. In view of the above, I do not find any tangible material on the basis of whereof the Award dated 31.03.2016 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib can be held

to be illegal, perverse, improper or suffering from vice of non appreciation of evidence on record or failure to take note of settled position of the law. The present petition is accordingly dismissed. The Award dated 31.03.2016 in application No.2320 dated 24.04.2015 passed by the Permanent Lok Adalat (Public Utility Services), Fatehgarh Sahib is hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

18.01.2024
Mangal Singh

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