2024:PHHC:122161

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

RSA No.1651 of 2016
Date of decision : 20.08.2024

Hardev Kaur and others ....Appellants

Versus

Dr. Gurmel Singh ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Monita Mehta, Advocate
for the appellants.

Mr. Vishal Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Plaintiffs are in appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the plaintiffs and the respondent as the defendant.

3. Plaintiffs filed suit for recovery of Rs.5.00 lacs as compensation on account of death of Gurbax Singh claiming the same to be the result of medical negligence on part of the defendant.

4. As per the pleadings raised in the plaint, the plaintiffs are the Legal Heirs of deceased Gurbax Singh. Gurbax Singh was serving as Peon-cum-Driver in Khalsa College. On 29th of March, 2002 while he was coming to his house after performing his duties on cycle he was hit by a

maruti car. Gurbax Singh is stated to have received multiple injuries. Gurbax Singh was taken to City Hospital owned and operated by the defendant. Plaintiffs claim that the defendant informed them that Gurbax Singh has not received any major injury and will be normal within 3-4 days. The plaintiffs paid Rs.4,000/- to the defendant as expenditure on treatment. On 5th of April, 2002 the defendant informed the attendants of Gurbax Singh that Gurbax Singh was required to undergo CT Scan. Gurbax Singh was taken to Guru Nanak Mission Hospital, Jalandhar. Doctors at Guru Nanak Mission Hospital informed Gurbax Singh that he was suffering from acute tetanus which by that time was beyond cure. It was also discovered that Gurbax Singh was suffering from fracture in his leg. Gurbax Singh was referred to PGIMER, Chandigarh. He was taken to New Ruby Hospital, Jalandhar where he died on 6th of April, 2002 at 11.00 AM. Cause of his death was acute and advance form of tetanus suffered due to medical negligence of the defendant. On notice, the defendant contested the suit. It was pleaded that Gurbax Singh deceased received accidental injuries prior to 29th of March, 2002 as well. It was admitted by the defendant that Gurbax Singh was brought to him. However, it was claimed that he was already suffering from a disease when he came. He was already having a fracture which was being treated by some other doctor. On 29th of March, 2002 the patient again received accidental injuries. When the deceased was brought to his hospital, he advised the attendants to take him to the Civil Hospital it being a case of road side accident. However, the attendants informed the

defendant that they don't want to take any police action and it was on humanitarian grounds that he treated the patient. Patient was stable. His blood-pressure, pulse rate and respiration were within normal range. Ultimately, the patient was taken by the attendants to some other Hospital and never turned back. It was thus pleaded by the defendant that he was not responsible for any negligence as he had given injection to Gurbax Singh vaccinating him against tetanus.

5. On the basis of the pleadings of the parties, following issues were framed :

> "1) Whether plaintiffs are entitled to recover Rs. 5 lakhs as damages due to death of Gurbax Singh allegedly caused by medical negligence of defendant? OPP
> 2) Whether suit is not maintainable in the present form? OPD
> 3) Whether plaintiff has concealed material facts from the court? If so, its effect? OPD
> 4) Whether plaintiffs have no cause of-action, to file the suit? OPD
> 5) Whether this court has no jurisdiction to try and decide the suit? OPD
> 6) Whether suit is bad for mis-joinder and nonjoinder of parties? OPD
> 7) Relief."

6. Trial Court decreed the suit holding the defendant guilty of medical negligence and held the defendant liable to pay an amount of Rs.4,80,000/- to the plaintiffs on account of death of Gurbax Singh caused due to medical negligence of the defendant.

7. In appeal filed by the defendant, Appellate Court reversed the finding holding that the accident occurred on 29th of March, 2002. Deceased died on 6th of April, 2002. There is no evidence on record to prove the cause of death and thus the defendant cannot be held guilty.

8. Counsel for the appellant submits that it has been proved on record that after Injection tatanus toxoid was administered intramuscularly in shoulder of the deceased, Injection tetaglobe 250 I.U was prescribed but there is no evidence that injection tetaglobe 250 I.U was administered. Had the said injection been administered, the life of the deceased would have been saved. Counsel for the appellants further submits that the defendant himself while appearing as DW-1 admitted that the patient was referred to Jalandhar suspecting it to be a case of developing tetanus and thus Appellate Court erred in holding that the cause of death could not be proved.

9. I have heard counsel for the parties and have gone through records of the case.

10. In order to prove their case, plaintiff No.1 Hardev Kaur appeared as PW-1 and Chanchal Singh appeared as PW-2. However, in the proceedings on application under Order 33 Rule 1 filed by the plaintiffs seeking permission to file suit as indigent person, they examined Dr. Gaurav Medical Officer from New Ruby Hospital as PW-2. Prior to coming to the treatment given by the defendant in the considered opinion of this Court, the testimony of Dr. Gaurav needs to be perused who is the independent

qualified witness examined during the trial. Testimony of Dr. Gaurav (PW-2) reads as under:

> "I have brought the original record. The date of admission is 5.4.2002 to 6.4.2002 of patient Gurbax Singh son of Hazara Singh, VPO Kandhala Jattan, District Hoshiarpur. The patient was referred to our hospital from City Hospital, Tanda and thereafter from City Hospital to Guru Nanak Mission Hospital and then to our hospital. I was present when the patient was admitted in our hospital. The patient was treated by Dr.Gurpinder Pal Singh, Medical Officer, New Ruby Hospital, Jalandhar. The bed head ticket of patient is 33621. The patient was given treatment of tetnus and fracture of left femuer, patient condition was serious explained to the patient attendant. Treatment was given and patient died due to sudden cardio respiratory arrest on 6.4.2002 at 2.35 P.M. The discharge slip of City Hospital is Ex.P2, refer slip of Guru Nanak Mission Hospital referred to higher institute for further treatment is Ex.P3, bed head ticket of New Ruby Hospital is Ex.P4.
>
> Exhibits are objected to).
>
> xxxxxxxxxxx
>
> I am M.B.B.S. I am working in New Ruby Hospital from 2002 onwards. I myself did not checked up or treated the patient Gurbax Singh. The record which I have brought today in the court is not in my hand writing nor signed by me. The copy of which is Ex.P4. The cause of death of Gurbax Singh is due to heart failure as well as lungs failure. Injuries was not the cause of death. When the patient came the history of the patient was given as fracture of left feamer one week back. There is over writing in Ex.P4 and there is no initial of the doctor or patient over that. City Hospital Tanda did not referred the patient to New Ruby Hospital. It is correct that Guru Nanak Mission Hospital referred the patient to New Ruby Hospital. I do not know who is author of documents Ex.P3. In our hospital injections were given to the patient Gurbax Singh and medicine were also given to him. the details of which is

mentioned in the bed head ticket. No POP was put in our hospital. The patient did not disclose us that he had old fracture prior to the fracture in question, this fact was also not disclosed by his attendant. No history regarding the receipt of injuries or the number of vehicle with which he met with an accident is mentioned. I do not know how much amount was charged by New Ruby Hospital from the patient or his relative. There is no such record. I can not tell even approximately. The receipt is given to the patient regarding charges by our hospital. Due to road side accident tatnus may occur if there is any injury in the skin. I do not know what treatment was given by the patient by the doctors of Guru Nanak Mission Hospital or any other hospital. It is correct that normally the history of the patient and the treatment given to the patient send by the referring hospital is given and on that basis we further treat the patient. I can not say when the tatnus originated or developed in this case and at what stage. It is correct that when there is fresh fracture on the old fracture the doctors comes to know about it. It is correct that in every hospital when the patient comes with accidental injury TT injection (Tatnus Toxiod) is given to the patient. It costs Rs.1.50. Tatglobe 250 Mg. was given. If the patient reaches in the hospital within 6 hours from the receipt of injury then he can survive otherwise not. It is correct that the tatnus may commence/starts immediately after receipt of accidental injury. It is not infectious disease. It is not possible that with the hands of the doctor or environment of the hospital cause tatnus. I have full knowledge about the tatnus. The only treatment of the tatnus is injection and not medicine. That can be given either interavenous or interathical. Even if the tatnus does not origin or commences even then the tatnus injection is given to the patient in any manner. I have seen the documents Ex.P2 regarding the treatment of Gurbax Singh while he was admitted in City Hospital, Tanda Urmur and in the bed head ticked Ex.P2 the injection TD Tatglobe 250 unit was given to the patient Gurbax Singh by that hospital. The injection could be given after every four hours. It is correct that the doctor of City Hospital has given

> injection of Tatglobe regularly to the patient. There is no question of negligence of any doctor in this case. I have been dealing with the patient of surgery, ortho medicine etc. I have been attending 4/5 patient regularly from the year 2002 onwards. New Ruby Hospital did not deem it fit to refer the patient to any other hospital. There was no possibility of the patient to survive in any hospital. I do not know the patient personally. Our hospital did not send any information to the police that Gurbax Singh is patient of accident case. Normally police comes to hospital for recording the statement of the patient. It is correct that dying declaration is recorded when the patient is at the verge of collapse or before due to accidental injury, burn injuries or in hurt cases. In this case no dying declaration was recorded by the hospital authority or by the police from Gurbax Singh or his relative."

11. In his testimony Dr. Gaurav proved that deceased Gurbax Singh was admitted with New Ruby Hospital, Jalandhar on 5th of April, 2002 where he died due to sudden cardio respiratory arrest on 6th of April, 2002. The cause of death of Gurbax Singh has been opined to be heart as well as lungs failure. Injuries were not cause of death. It has come on record that from City Hospital, Tanda i.e. the defendant, the patient went to Guru Nanak Mission Hospital. It was Guru Nanak Mission Hospital that referred the patient to New Ruby Hospital. Even Dr. Gaurav was not aware as to what treatment was given at Guru Nanak Mission Hospital and no attempt was made by the plaintiffs to examine any witness from Guru Nanak Mission Hospital that can throw light upon the treatment given at that hospital to the deceased. The discharge summary of the Guru Nanak Mission Hospital or that of the defendant hospital has not come on record. He further admitted

that Injection Tetanus Toxoide was given to Gurbax Singh and Injection Tetaglobe 250 Mg. was also administered. He further admitted that from the documents Exhibit P-2 it was evident that deceased Gurbax Singh was administered Injection TD Tetaglobe 250 unit, regularly. He also admitted that there was no question of negligence of any doctor in the present case. Thus, from the testimony of an independent witness in the form of Medical Officer of New Ruby Hospital, who appeared as PW-2, the following inferences can be drawn :

(i) That the patient died due to cardio respiratory arrest on 6th of April, 2002.

(ii) That Injection Tetaglobe 250 I.U was administered to the patient Gurbax Singh the deceased, regularly.

(iii) There was no question of negligence of any doctor.

12. Law w.r.t. medical negligence and the mode of proof thereof has been elaborately laid down by Supreme Court in the case of **Jacob Mathew vs. State of Punjab and another, (2005) 6 SCC 1** wherein Apex Court held as under:

> "50. Before we embark upon summing up our conclusions on the several issues of law which we have dealt with hereinabove, we are inclined to quote some of the conclusions arrived at by the learned authors of "Errors, Medicine and the Law" (pp. 241248), (recorded at the end of the book in the chapter titled - 'Conclusion') highlighting the link between moral fault, blame and justice in reference to medical profession and negligence. These are of significance and relevant to the issues before us. Hence we quote :-

(i) The social efficacy of blame and related sanctions in particular cases of deliberate wrongdoings may be a matter of dispute, but their necessity - in principle - from a moral point of view, has been accepted. Distasteful as punishment may be, the social, and possibly moral, need to punish people for wrongdoing, occasionally in a severe fashion, cannot be escaped. A society in which blame is overemphasized may become paralysed. This is not only because such a society will inevitably be backward-looking, but also because fear of blame inhibits the uncluttered exercise of judgment in relations between persons. If we are constantly concerned about whether our actions will be the subject of complaint, and that such complaint is likely to lead to legal action or disciplinary proceedings, a relationship of suspicious formality between persons is inevitable. (ibid, pp. 242243)

(ii) Culpability may attach to the consequence of an error in circumstances where substandard antecedent conduct has been deliberate, and has contributed to the generation of the error or to its outcome. In case of errors, the only failure is a failure defined in terms of the normative standard of what should have been done. There is a tendency to confuse the reasonable person with the error-free person. While nobody can avoid errors on the basis of simply choosing not to make them, people can choose not to commit violations. A violation is culpable. (ibid, p. 245).

(iii) Before the court faced with deciding the cases of professional negligence there are two sets of interests which are at stake :

the interests of the plaintiff and the interests of the defendant. A correct balance of these two sets of interests should ensure that tort liability is restricted to those cases where there is a real failure to behave as a reasonably competent practitioner would have behaved. An

inappropriate raising of the standard of care threatens this balance. (ibid, p. 246). A consequence of encouraging litigation for loss is to persuade the public that all loss encountered in a medical context is the result of the failure of somebody in the system to provide the level of care to which the patient is entitled. The effect of this on the doctor-patient relationship is distorting and will not be to the benefit of the patient in the long run. It is also unjustified to impose on those engaged in medical treatment an undue degree of additional stress and anxiety in the conduct of their profession. Equally, it would be wrong to impose such stress and anxiety on any other person performing a demanding function in society. (ibid, p. 247). While expectations from the professionals must be realistic and the expected standards attainable, this implies recognition of the nature of ordinary human error and human limitations in the performance of complex tasks. (ibid, p. 247).

(iv) Conviction for any substantial criminal offence requires that the accused person should have acted with a morally blameworthy state of mind. Recklessness and deliberate wrongdoing, are morally blameworthy, but any conduct falling short of that should not be the subject of criminal liability. Common-law systems have traditionally only made negligence the subject of criminal sanction when the level of negligence has been high - a standard traditionally described as gross negligence. In fact, negligence at that level is likely to be indistinguishable from recklessness. (ibid, p. 248).

(v) Blame is a powerful weapon. Its inappropriate use distorts tolerant and constructive relations between people. Distinguishing between (a) accidents which are life's misfortune for which nobody is morally responsible, (b) wrongs amounting to culpable conduct and constituting grounds for compensation, and (c) those (i.e. wrongs)

> calling for punishment on account of being gross or of a very high degree requires and calls for careful, morally sensitive and scientifically informed analysis; else there would be injustice to the larger interest of the society. (ibid, p. 248).

Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to the society.

Conclusions summed up

51. We sum up our conclusions as under :-

> (1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three : 'duty', 'breach' and 'resulting damage'.
>
> (2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have

chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings : either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may

not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in Section 304A of Indian Penal Code, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the Indian Penal Code has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

13. In view of the aforesaid circumstances, this Court finds that the plaintiffs failed to prove the medical negligence of the respondent on following counts:

(a) The deceased Gurbax Singh suffered injuries in the accident on 29th of March, 2002. On 5th of April, 2002 he was taken to Guru Nanak Mission Hospital, Jalandhar. It is claimed by the plaintiffs that Guru Nanak Mission Hospital referred Gurbax Singh to PGIMER, Chandigarh or to New Ruby Hospital, Jalandhar. However, nothing has come on record as to what treatment was administered by Guru Nanak Mission Hospital. There is neither any documentary evidence nor any person has been examined from the said hospital.

(b) Dr. Vikas was examined as PW2 in the proceedings in application under Order 33 Rule 1 CPC. Dr. Vikas is a Medical Officer who was at the relevant time serving with the New Ruby Hospital, Jalandhar where deceased Gurbax Singh died on 6th of April, 2002. Dr. Vikas, Medical Officer fully proved the case of the defendant admitting that as per document Exhibit P-2, the deceased was regularly administered Injection for tetanus. He further proved that the cause of death was heart and lungs failure and that there was no question of negligence of any doctor in the present case.

14. In view of above, this Court does not find any reason to interfere in a well reasoned judgment recorded by the lower Appellate Court.

Consequently, finding no merit in the instant appeal, the same is ordered to be dismissed.

15. Pending application(s), if any, shall also stand disposed off.

August 20, 2024 **(Pankaj Jain)**
Dpr **Judge**

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