

Dr. Gian Chand Vs. Vinod Kumar Sharma and ors.

Dr. Gian Chand Vs. Vinod Kumar Sharma and ors.

SooperKanoon Citation : sooperkanoon.com/891114

Court : Himachal Pradesh

Decided On : Jun-03-2008

Reported in : 2010ACJ258,AIR2008HP97

Judge : Deepak Gupta, J.

Appellant : Dr. Gian Chand

Respondent : Vinod Kumar Sharma and ors.

Disposition : Appeal dismissed

Judgement :

ORDER

Deepak Gupta, J.

1. The aforesaid two appeals are being disposed of by one common judgment since both arise out of the same judgment and decree rendered by the learned District Judge, Sirmour at Nahan in Civil Suit No. 3-9/1 of 1996 decided on 22-7-1997.

2. Briefly stated the facts are that the respondents 1 & 2 in these appeals were plaintiffs before the trial Court. They filed a civil suit for recovery of Rs. 3 lakhs as damages on account of the death of their daughter Neha. It was alleged that the death of Neha took place due to the negligence of Dr. Gian Chand, defendant No.

2, appellant in RFA No. 254 of 1997. The case set up was that Kumar Neha was a minor child aged 3 years. On 10th January, 1996 she fell into a bucket of hot water and sustained burn injuries on her abdomen, chest, thighs and back. She was immediately taken to the Primary health Centre, Shillai from where she was shifted to the District Hospital, Nahan on the same day itself. It is not disputed that on 10th January, 1996 Neha was admitted in District Hospital, Nahan.

3. According to the plaintiff Neha had suffered minor burns and though she was admitted to the surgical ward she was shifted to the children medical ward on the night intervening 10th and 11th January, 1996. The plaintiffs allege that on 11th January, 1996 when defendant No. 2 Dr. Gian Chand who was in-charge of the children medical ward came to the ward he got very angry on seeing Neha in his ward since Neha was a surgical case and had been kept in the children medical ward without his permission. The plaintiffs allege that Dr. Gian Chand was adamant that Neha should be shifted out of the children medical ward. Even though plaintiff No. 2 pleaded with him and requested that her daughter be allowed to remain in the ward he did not accept her plea and on 12th January, 1996 he ensured that Neha was shifted to the veranda outside the children medical ward.

4. The plaintiffs allege that this veranda though glazed had a number of broken window panes. It was further alleged that due to burn injuries deceased Neha could not be covered with clothes and as such she got cold and died of pneumonia. Neha was kept in this veranda from 12th January to 15th January, 1996 when she was shifted to the Special Ward. Her condition deteriorated on the night of 15th January, 1996 and she died in the morning of 16th January, 1996. The plaintiffs allege that the death of Neha is directly attributable to the negligence and callous attitude of defendant No. 2 Dr. Gian Chand who forced the child out of his ward into the veranda.

5. Both the defendants contested the suit. They denied that there was any negligence. According to the defendants the glazed veranda is being used as the children surgical ward for the last many years and nobody had ever complained about it. As far as Dr. Gian Chand is concerned he denied that he had forced the parents to shift Neha from the children medical ward. He also denied any

negligence on his part.

6. On the pleadings of the parties, the learned Court below framed the following issues:

1. Whether Kumar Neha died on 16-1-1996 at about 4.00 p.m. due to the negligence of defendant No. 2 as alleged ...OPP.

2. If issue No. 1 is proved, whether the plaintiffs are the heirs and legal representatives of Kumari Neha, deceased, and are entitled to compensation, if so to what amount and from whom ?...OPP.

3. Whether the notice under Section 80, CPC was issued to the defendant No. 2, if so its effect? ...OPP.

4. Relief.

7. The learned trial Court after recording the evidence held that the plaintiffs were entitled to compensation as the death of Neha took place due to pneumonia which she acquired on account of being kept in the cold by the negligent act of Dr. Gian Chand. He awarded Rs. 50,000/- as compensation. Hence, the present appeals one filed by the State and another by Dr. Gian Chand.

8. The main questions to be decided in this case are:

(i) Whether Kumari Neha was shifted from the children medical ward to the glazed veranda which was being run as a surgical ward at the instance of defendant No. 2 ?

(ii) If point No. 1 is proved, whether this act of the defendant in shifting Kumari Neha amounted to negligence ?

(iii) Whether Kumari Neha died due to the negligence, if any, of defendant No. 2 ?

9. Plaintiff No. 2 mother of Kumari Neha appeared as P.W. 1. Plaintiffs in support of their case examined one Shanti Devi mother of plaintiff and closed their evidence.

10. A perusal of the statement of the mother shows that after Neha was shifted from Shillai to Nahan one Dr. Narang admitted Neha in the hospital at Nahan and she was initially kept in the male surgical ward. According to the mother on the same night Dr. C. L. Sharma shifted Neha from the male surgical ward to the children ward. Neha stayed there on 10th and 11th January, 1996. According to the mother she was making good progress and talking. The mother has stated that on 11th January when defendant No. 2 came to the ward he got very angry and stated that how Neha was admitted in the children ward without his permission and insisted that she be shifted out. The mother states that thereafter she pleaded with defendant No. 2 that her child is suffering from burn injuries and cannot wear clothes and she may be kept in the ward. However, on the next day i.e. 12-1-1996 when defendant No. 2 came to the children ward he again got angry with the mother and on his insistence the child was shifted to the veranda outside. The veranda was about 80 ft. long and according to the plaintiff a number of window panes were broken. It was very cold and Kumari Neha was lying in the cold from 12-1-1996 to 15-1-1996 and in this period her condition worsened and she caught pneumonia. On 15-1-1996 Neha was shifted to the Special ward. Her condition however did not improve and kept on deteriorating. In the morning of 16th January, 1996 she died. According to this witness her daughter died due to the negligence of Dr. Gian Chand who forced the child to be shifted from the children medical ward to the veranda in which the surgical ward was situated.

11. In cross-examination this witness denied that her daughter was suffering from serious burn injuries. She admitted that there are separate wards in the hospital for treatment of separate types of cases. According to her, Neha was treated by Dr. C. L. Sharma who is a surgeon, then later she stated that some other doctor was treating her. She admitted that defendant No. 2 had never treated her daughter. According to her the window panes of the veranda were broken and latches were not working. She admits that there were four beds in the veranda. On three beds patients were lying and one bed was empty.

12. She could not admit or deny the suggestion that this area was used as a surgical ward. A suggestion was put to her that children of the medical ward are not kept with the children of surgical ward to avoid the danger of infection. She

denied the suggestion that Dr. C. L. Sharma had not admitted her child to the children medical ward. A suggestion was also put to her that Dr. C. L. Sharma had no right to admit her daughter to the children medical ward. She has denied the suggestion that her daughter's temperature was almost normal from 12-1-1996 to 15-1-1996. She also denied the suggestion that on 16-1-1996 her child was suffering from diarrhea. She has denied the suggestion that her daughter died of diarrhea and not of pneumonia.

13. P.W. 2 Shanti Devi is the mother of plaintiff No. 2. Her evidence is only to the effect that defendant No. 2 had insisted that the child be removed to the veranda where the surgical ward was situated.

14. The defendant in evidence examined 5 witnesses including Dr. Gian Chand. D.W. 1 Sirmour Singh has only produced the record. Dr. C. L. Sharma is D.W. 2. He has stated that on 10-1-1996 Neha was admitted to the male surgical ward since there was no vacant bed in the child surgical ward. According to him the admission was made by Dr. Narang at about 6.15 p.m. He states that Neha was suffering from superficial burns. According to him on 15-1-1996 Neha was shifted to the special ward at the request of the guardians and on 16-1-1996 Neha died at 9.10 a.m. on account of shock due to burn injuries and aspiration broncho pneumonia. According to him this ailment was on account of retention of vomiting material and inhalation of foreign particles leading to pneumonia.

15. This has no relationship with cold or exposure. This witness also states that the veranda is enclosed. In cross-examination this witness has admitted that on 10-1-1996 Neha was shifted to the children medical ward. He has no knowledge as to whether Neha was shifted from the children medical ward at the instance of Dr. Gian Chand. He has also admitted that there is no partition between the children surgical ward or the other portion of the veranda of the hospital. However, the whole veranda is enclosed. He also admits that the veranda would be colder than the room. He denied the suggestion that the window panes of the veranda were broken.

16. D.W. 3 is Dr. S. C. Goel. He has stated that he treated the child on 16-1-1996 and she died due to burns with second possibility of aspiratory broncho

pneumonia. He also stated that this aspiratory broncho pneumonia has no connection with cold. In cross-examination he has given the reasons on the basis of which he reached this conclusion. He has denied the suggestion that he has wrongly mentioned the cause of death of child. He has also denied the suggestion that the notes Ext. D-1 were given after the death of the child.

17. D.W. 4 Vinod Kumar Patwari has proved the weather in Nahan during the aforesaid period. The weather chart shows that it was raining from 13-1-1996 to 16-1-1996.

18. D.W. 5 is Dr. Gian Chand. He states that he was in-charge of the children medical ward of District Hospital Nahan at the relevant time. Kumari Neha was never treated by him nor was admitted to the children medical ward and therefore the question of his discharging Neha from the children medical ward did not arise. He further states that in the month of January, 1996 there was a long dry spell and therefore the children medical ward was overcrowded. According to him there are four beds in the glazed veranda adjacent to the children medical ward where the children surgical ward is housed. He has not said a word as to whether he had or had not asked Neha to be shifted from the children medical ward.

19. In cross-examination he has admitted that he had made no mention in the written statement about the ward being overcrowded or that there was dry spell in January. He denied the suggestion that when he took the round of the children ward on 11th January, 1996 he got flared up after seeing Neha and asked the plaintiff No. 2 to remove Neha to some other place. He has denied the suggestion that the mother pleaded with him to let Neha remain in the children medical ward which was warmer than the surgical ward. He also denied the suggestion that on 12th January, 1996 he turned Neha out of the children medical ward.

20. This is virtually the entire oral evidence in the case. It would however be pertinent to refer the bed head ticket and record of treatment of Neha which has been produced by defendants themselves. It is true that only portion Ext. D-1 of this bed head ticket has been proved but even counsel for Dr. Gian Chand has made reference to entire bed head ticket in support of his case. The bed head ticket reveals that in the late afternoon of 12th January, 1996 Neha was suffering

from fever and thereafter her temperature came down to almost normal. It is contended on behalf of the defendants that there is no material to show that Neha was shifted at the instance of Dr. Gian Chand. It is also contended that aspiratory broncho pneumonia has no connection with cold and even if it be assumed that Dr. Gian Chand had ordered the shifting of Neha then also there is nothing to connect her death with this action of Dr. Gian Chand.

21. The whole case of the defence virtually revolves around Ext. D. 1 and the statement of Dr. Goel. The record as produced by defendants shows that the child was improving. On 10th January the child was given some drip and administered some antibiotics. Similar treatment was given on the next date. Same treatment was continued on 12 and 13-1-1996. In fact on 13-1-1996 it is recorded that the child was better. On 14-1-1996 it is recorded that the child was not sleeping and was having irritation and she was administered medicine for this. On 15-1-1996 the child was shifted to the special ward. It is first noted that the child is better. At 11 p.m. on 15-1-1996 the child complained of diarrhea and medicines were given by D.W. 3.

22. Thereafter, on 16th morning no time is recorded but the child was put on a drip, given some injections and her pulse was ordered to be watched after 15 minutes. It was also advised that the child be given hot water bottle and be shown to a pediatrician. This note appears at the end of the page at the bottom right hand side. Thereafter, on the same day the notes which have been exhibited as Ext. D-1 made by Dr. Goel are made on the bottom left hand side. The note reads as follows:

16/1 8.40 a.m.

Child was alright and suddenly child in shock. Ups cyavosed? Due to leures cheri-crypts ++ aspiration. Pulse not recordable, Respiration sluggish, Heart sound +.

9-10 a.m. Respiration sluggish. Heart sounds not audible.

Ext. cardiac, massage done child could not be revived and breathed last at about 9.15 a.m.

23. From the material on record especially the statement of the mother it is apparent that the child was shifted to the children medical ward on the night intervening 10/11 January, 1996. This fact has also been admitted by D.W. 2 Dr. C. L. Sharma. It may be true that there is no formal order admitting her to the children medical ward but from the statement of Dr. C. L. Sharma who was treating the patient and the statement of the mother and the grandmother it is apparent that the child remained in this ward from 10th night till 12th when she was shifted to the surgical ward. Defendant No. 2 has feigned ignorance about the admission of the child to his ward. In his examination he has not said a word with regard to the child actually being there in the ward or not. The child may have been wrongly admitted to the medical ward but then some record should have been produced to show the reasons why she was sent out from the ward. It also stands proved on record that Neha was suffering from burn injuries. She obviously could not be covered with blankets or wear clothes. It is a well known fact that patients of burn injuries are normally kept under a tent like structure to avoid contact with clothes etc. The defendants have produced no record whatsoever to show the condition of the veranda. It is important to note that Dr. C.L. Sharma himself states that the veranda was colder than the room.

24. The length of the veranda is stated to be about 80 ft. The surgical ward was situated only in one corner. It is admitted that the portion of the veranda housing the surgical ward was not separately enclosed. Therefore, the veranda would be windy and much colder

25. In my considered opinion, keeping in view the statement of the parents as well as the statement of Dr. C. L. Sharma it stands proved that Neha was kept in the children medical ward from the night intervening 10th and 11th January, 2006. Why was she shifted from this ward According to the plaintiffs she was shifted at the instance of Dr. Gian Chand who maintains a stoic silence in this regard. Dr. Gian Chand is not telling the truth. His statement tends to indicate that Neha was never kept in this ward. This is contradicted by Dr. C. L. Sharma. It is thus apparent that Dr. Gian Chand is trying to avoid telling the truth. It appears that Dr. Gian Chand took umbrage to the fact that the child had been kept in his ward without his permission and forced her to leave the ward. One expects more

humanitarian behaviour from a doctor. The defendants have placed no materials on record to show what is the legal sanction behind having separate wards. There is no prohibition, proved on record, that a surgical patient cannot be admitted to the medical ward.

26. Even assuming that the action of the doctor who admitted Neha to the children medical ward was not correct, the fact remains that she had been admitted therein. Due to her burn injuries she could not be clothed. Therefore, she should not have been exposed to the vagaries of weather. She should have been kept in the warmest place available and probably for this reason on the first night she was shifted to the children medical ward. Dr. Gian Chand has not given any explanation as to why he shifted her out. His case is of total denial which cannot be believed. Therefore, I am of the view that it stands proved on record that Neha was shifted at the instance of Dr. Gian Chand.

27. It is contended on behalf of the defendants, that Neha has not died of cold and therefore also the defendants are not liable. Ext. D.1 on which great reliance is placed does not inspire confidence. There are two notes of Dr. Goel prior to this note. One of 15th January and one of 16th January. In the second note no time is indicated. Why was continuation not done on the back of * the bed head ticket which would have been the normal thing to do. If the note of 8.40 a.m. reproduced above is perused it is clear that the child who was all right suddenly went into a shock. At 9.10 a.m. it is again recorded that respiration is sluggish and it is further recorded that child died about 9.15 a.m.

28. The learned trial Court has come to the conclusion that the cause of death as given by the defendants does not appear to be correct. In the certificate issued after the death which is Ext. D.2 the primary cause given is shock due to burns and aspiratory broncho pneumonia. As far as shock due to burns is concerned there is no mention of it in the note Ext. D-1. There also appears to be some correction in the first note of 8-40 a.m. where the word aspiration has been introduced. It would also be pertinent to mention that there are many unanswered questions with regard to the note Ext. D-1. The hand-writing of Dr. Goel is virtually half the size of his own hand-writing in the other notes made on 15th January and

in the morning of 16th January. What was the need of making the notes in such smaller handwriting and what was the need of fitting in the notes on the same page itself? It appears that after the death of Neha both these notes of 8-40 a.m. and 9-10 a.m. were recorded. This casts a grave doubt on the correctness and authenticity of the said notes.

29. It may also be mentioned that Dr. Gian Chand has stated other facts which are not at all supported by the record. As already noted above he did not even admit the fact that Neha was admitted in his ward. This was a total lie. According to him January was a dry month which fact is contradicted by D.W. 4. He has stated that his ward was over-crowded but no material evidence has been placed on record to support this version. Once Dr. C. L. Sharma had admitted that Neha had been kept in the children medical ward it showed that there was a vacant bed in the ward. Otherwise how could Neha had been kept in the said ward? It is, therefore, clear that the statement of D.W. 5 is just a tissue of lies and no reliance can be placed on the same.

30. Due to the reasons pointed out above it is evident that the notes Ext. D-1 were incorporated after the death of Neha. It is apparent that the defendants are hiding the real cause of death of Neha. Therefore, adverse inference has to be drawn against them. Even though there may not be direct evidence to show that Neha died as a result of cold the learned trial Court has rightly held that because the defendants have set up a false case adverse inference must be drawn against them.

31. Keeping in view the entire evidence discussed above, I am of the view that Dr. Gian Chand was not only negligent but he was callous in his approach when he forced the parents to shift Neha from the children medical ward to the veranda outside in the cold rainy weather of January especially keeping in consideration the injuries suffered by her and the fact that she could not even wear clothes.

32. In view of the above discussion, I am of the considered view that the learned trial Court rightly held that the death of Neha occurred due to the negligence of defendant No. 2 by doing an act which no reasonable person much less a medical professional should have done. The mere act of removing Neha from the children

medical ward to the cold veranda outside itself entitles the plaintiffs to damages and makes the defendants liable for the death of Neha.

33. As far as the quantum of damages is concerned, the trial Court has only granted Rs. 50,000/- as compensation. This in fact is a very conservative sum and cannot be reduced only further.

34. Keeping in view the aforesaid discussion, I find no merits in the appeals which are accordingly dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com