245.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4020 of 2015 (O&M)
Date of decision:18.05.2016

The Oriental Insurance Company Limited ... Appellant

versus

Sh. R.K. Dogra @ Rajinder Kumar, through his LRs and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Manjari Nehru Kaul, Advocate,
for the appellant.

Mr. Ashwani Arora, Advocate,
for respondents 1 to 3.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ?**Yes.**

K.Kannan, J. *(Oral)*

1. The appeal is at the instance of the Insurance Company challenging the award on the ground that there was no proof that the death was on account of accident. It was a case of an accident having taken place on 15.03.2013 when the MLR recorded that he had head injuries. He was discharged from the hospital in a satisfactory condition on 19.03.2013. He was readmitted on 03.05.2013 and the summary of treatment recorded from the hospital showed that the problem was diagnosed to be "right temporo-parietal bleed with midline shift". The condition of the patient was said to be bad but he got discharged on 07.05.2013 against medical

advice. He ultimately succumbed to death on the day of his discharge itself.

2. The counsel for the Insurance Company argued that he was already a TB patient with cirrhosis of liver and it cannot be surely predicated even without a post mortem that death was only account of head injury suffered in the accident. The doctor, who was examined in court, stated that chances of recovery could not be ruled out if the deceased had stayed on for treatment. The doctor was not however able to assess the "percentage of recovery possible" (sic), meaning thereby he was not able to assess the prospect of recovery. This, according to the counsel, would show that a patient who was indiscreet to deny himself the treatment and who could have been treated well could leave any cause of action for the representatives to plead that the death was only on account of accident.

3. In this case between the date of accident on 15.03.2013 to the date of death on 07.05.2013, there was no other intervening episode that could have aggravated the medical condition except that the petitioner denied to himself the treatment which perhaps was available. The cause for death could also be easily discerned from the fact that when he was readmitted on 03.05.2013, the diagnosis was that there were internal bleeding within the skull and when there was a reference about the general poor condition. Seen in the context

of such diagnosis with no reference to the condition of cirrhosis of liver or the tuberculosis which the deceased was said to have already contacted the precipitating factor for the poor condition was only the head injury with internal bleeding within the skull in the brain area. A decision to get discharged even against medical advice at the terminal stage of life shall not be likened to an invitation to be assisted suicide. It is embracing dignity in death.

4. The patient autonomy in the manner of treatment is a facet of human right and it cannot be ever contended in court that the patient ought to have taken treatment that had a good prognosis for recovery. There have been instances where due to religious beliefs (for instance, Jehovah's witnesses' denial of blood transfusion), patients have declined to take treatment and courts have confronted these problems as well and come to decisions of hands off approach. That is precisely what has been also recorded in the discharge summary that the patient was getting discharged at his own risk and has assured that he will have no right of recourse against the doctor from the hospital. The undertaking will thus go far and no further. It will not exculpate a tort feasor or a person who is bound to indemnify to make possible a plea that the patient ought to have taken treatment. A right not to get treated is just as well a significant right to a patient as a right to be treated.

5. The US Supreme Court said in ***Cruzan Versus Director***

Missouri Department of Health-(1990) 110 S.Ct 2841 (Scalia. J.), while asserting a case of patient autonomy: “The point at which life becomes 'worthless' and the point at which the means necessary to preserve it to become “extraordinary” or “inappropriate”, are neither set forth in the Constitution nor known to the nine Justices of this court and better than they are known to nine people picked at random from the Kansas City telephone directory.” At a metaphysical level, the questions could be: Is death inherently evil? Are we all not destined to die? Is it not more important how we live than how long we live? (Charles I Lugosi, Visiting Professor, Yale Law School). A dilemma that a court might face, when approached whether the patient shall be allowed to die by withdrawal of life support is quite different from a patient expressing desire not to be treated. In the former, we are broaching issue of passive euthanasia and in the latter, it is an issue of patient autonomy. The former grapples with legal uncertainty and still debatable (an issue referred to a larger Bench by a 5 Members Bench of the Supreme Court (***Common Cause Versus Union of India-(2014) 5 SCC 338***)). In the latter, there is no ambiguity; it is beyond debate.

6. The ultimate decision making the insurer liable is therefore inevitable of confirming the decision already rendered. The appeal is dismissed.

18.05.2016 **(K.KANNAN)**
sanjeev **JUDGE**