

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1171 of 2003

Date	Order with signature of Judge
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For evidence.

05.09.2023

Mr. Qaiser Javed, Advocate for the Plaintiff.
Mr. Hassan Arif, Advocate for Defendant No.1.
Mr. Anwar Kamal, Advocate for Defendant No.2.

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On the last date of hearing, the Plaintiff's Counsel had informed the Court that the Plaintiff, Abdul Khalil, had passed away. Accordingly, this Court put Plaintiff on notice as to the suit's maintainability on Plaintiff's demise.

Through this Suit, Plaintiff prayed for the following reliefs:

1. A decree in the sum of Rs.30 Million against the Defendants jointly and severally to pay the said sum of damages/compensation to the Plaintiff or any other amount this Hon'ble Court may deem fit in circumstances of the case.
2. Reimburse to the Plaintiff Rs.235,000/- the amount charged for bypass surgery, which introduced the Plaintiff Hepatitis C/E viruses.
3. Pay the Plaintiff the charges incurred on the medical tests conducted for monitoring the Hepatitis virus disease and amount required for rehabilitation and curative treatment of the Plaintiff as interim compensatory relief.
4. Cost of the suit may be awarded to the Plaintiff
5. Any other relief or reliefs that this Hon'ble Court may deem just and proper under the circumstances of the case be granted.

This suit arises out of a claim for medical negligence alleged against the Defendant Hospital. The action is based on tort. Under Order XXII Rules 1 and 3 CPC, the legal heirs of a deceased plaintiff succeed him/her in the suit if the "right to sue survives".

An exception to the above-stated principle of actio personalis moritur cum persona is contained in Order XXII Rule 6 CPC which stipulates that "...whether cause of action survives or not, there shall be no abatement by reason of death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the

death and shall have the same force and effect as if it had been pronounced before the death took place”.

A case hearing cannot be concluded where anything remains to be done or furnished by either party as a basis for consideration, which is to end in judgment. While issues have been settled, evidence has yet to commence in the present case. The hearing has yet to be concluded, and the culmination of the pronouncement of judgment is far away. In the circumstances, it is not a case that falls within the said exception. In my opinion, I am fortified by my learned brother's judgment in the case of Zahid Hussain Awan v. United Bank Limited, 2018 MLD 1369.

In view of the above, I hold that on the demise of the plaintiff, this action for medical negligence against the defendant hospital died with Plaintiff, and the right to continue the suit does not survive to his legal heirs. Plaintiff's Counsel also concedes this point. This suit has abated and is disposed of accordingly.

J U D G E