(1996) 07 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

A P Joseph — APPELLANT

Vs

Kunjannamma Mathai — RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Citation : 1997 3 CPJ 382

Hon'ble Judges : P.K.SHAMSUDDIN , K.BALAKRISHNAN NAIR , K.M.LATHA J.

Judgement

1. THIS complaint is filed seeking compensation of Rs. 5,00,100/alleging deficiency on the part of the opposite parties.

2. THE complainants are husband and wife and they got married on 10.11.1988 and the first child was born on 22.8.1989. This is stated to be a normal delivery. The 2nd child was born on 5.2.1991. This was delivered by a caesarean operation at the first opposite party''s hospital. The 2nd complainant thereafter was recovering treatment from the Government Hospital, Neyyattinkara. After about five months of conception, she felt abnormal pain and as per the advice of her relatives, she went to the opposite party''s hospital and about three months she was consulting and receiving treatment from the said hospital. On 5.2.1991 she was admitted to the hospital of 1st opposite party. They consulted the concerned Doctor on the advisability of having a 3rd child, as they wanted a girl. The second opposite party said that there was no difficulty but the delivery would be only caesarean. Accordingly the 3rd child was conceived and from the time of conception the second complainant receiving treatment from the first opposite party''s hospital and she was undergoing regular and periodical check -ups from there. She was also observing and complying with all the direction made by the doctors. After about months of pregnancy she experienced abdominal pain. Again she was admitted to the first opposite party''s hospital on 26.12.1992 and a caesarean operation was performed on 27.12.1992. That was also male child.

3. THE 2nd opposite party suggested a PPS surgery and that was done.

4. THE second complainant was feeling abdominal pain again, since July, 1993.

She was having regular periods for some period and more after a certain time. When consulted the 2nd opposite party they were told that there may not be menses, even if it was there, the quantity may be little. She felt abdominal pain and it became serious in November, 1993. In the absence of 2nd opposite party they consulted the 1st opposite party. She told that it was not pregnancy but some abnormal growth inside the stomach and that could be operated and removed.

5. BECAUSE of the earlier serious pain she suffered in connection with the caesarean, the 2nd complainant did not feel inclined to have another surgery and, therefore, she went to the S.A.T. hospital, Trivandrum on 29.11.1993 and consulted Dr. Syamala, the Asst. Professor of Obstetrics and Gynaecology. After examination she advised a scan. The scan report revealed that she had pregnancy of 21 weeks growth. Dr. Syamala told the complainants that periodical checking was necessary and should get hospitalised early. The doctor suggested that there would be serious difficulty because it was the 3rd caesarean and that the Fallopian Tube should be removed. For pain, she was taking regular medication, and pills for shortage of blood. All this caused anguish, tension and pain for both the complainants. The possibility of having handicapped child, also could not be ruled out. The whole calamity was caused by the professional negligence of the 2nd opposite party and 1st opposite party is vicariously liable in tort for the damages caused by negligence for having caused unwanted pregnancy, notwithstanding the PPS conducted on her. The complainant issued a notice through a Lawyer to the first opposite party on 9.2.1994 to which reply was filed. The contentions raised by the opposite party in the reply are untenable and it is only because of the negligence on the part of the opposite parties the 4th pregnancy took place.

6. A joint version was filed by the opposite parties denying the allegations. The opposite parties do not know whether the first delivery was normal or not. The second delivery was at the first opposite party''s hospital on 5.2.1991 after a caesarean operation and it was opted as a lifesaving measure as the second complainant was suffering from condition known as Placenta Previa. The second complainant was operated successfully by the second opposite party and she delivered a healthy baby. The second complainant was discharged by the hospital after having been convinced and satisfied that she had recovered her health satisfactorily with instructions to attend the outpatient department of the opposite party hospital with the child regularly in order to monitor their health conditions as well as to brief them about family planning. It is true that the complainant sought advice from the 2nd opposite party with regard to having another child. However, the second opposite party pointed out that as per medical text there would be no problem to have a third child to a patient who has undergone a caesarean operation but the same may have to be again by way of caesarean. The complainant was also told that it is probable that in such a case the complainant''s caesarean scar is likely to rupture at the subsequent delivery especially in this particular condition, which the complainant was

suffering from. However, the second opposite party considering her physical condition had advised her to adopt family planning measures and avoid pregnancy at least for a period of 3 years to recoup her health. The conception of the third child was against medical advice. The allegation made by the complainant that the 2nd complainant was under regular periodical checkup at the first opposite party''s hospital is not correct. The second complainant visited the hospital only on two occasions on 26.9.1991 and 10.6.1992 out of which her visit on 26.9.1991 was prior to her third conception. On 10.6.1992 when the 2nd complainant had visited the hospital she was three months'' pregnant and after her examination she was directed to visit the hospital for a review after one month but that was not done and she visited the hospital only on 26.12.1996 after a laps of over six months. The second complainant visited the hospital with a complaint of abdominal pain. Immediately the complainant was examined and it was found that she had reached an advanced stage of pregnancy and signs of labour pain had set in. The attending Doctor was also noticed scar tenderness and the complainant was administered a drug called Arlidin tablets to prevent uterine contraction as the expected date of delivery was 8.1.1993 and to avoid the delivery of a low weight baby, it was decided to prolong the pregnancy. But as the complainant was suffering from severe abdominal pain she was examined and on examination it was seen that the complainant had scar tenderness. So caesarean operation was done on 27.12.1992 by opening the abdomen after excising the previous scar and she delivered a male alive child weighing 2.5. Kgm. and at the request of the complainants sterilization was done by Bilateral partial salpingectomy on 2nd complainant. The second complainant was given proper and effective management in the hospital during her confinement and there was no complaint whatsoever. No direction was given to the complainant to go to any other hospital as claimed by the complainant. The opposite parties are not aware of Dr. Mohan or Devi Hospital of Vellarada. She was also made known of the risk factors involved in undergoing PPS surgery and the complainant after fully comprehending the nature of operation and the risks involved had voluntarily and with full consent submitted herself to the said operation. Tubal sterilizations are not always 100% successful whatever be the technique employed. No method of sterilization is entirely safe. Even after hysterectomy there has been reported cases of pregnancy. Abdominal pregnancies have been reported even after hysterectomy. The failure following tubal legdrous may be due to recanalisation of tube or tube -peritoneal fistula. Failure rate is six -fold more when it was performed alongwith hystertomy or caesareain operation for reasons yet not known. The technique adopted by the 2nd opposite party for the sterilisation operation was one of the safest one, which was a combination of fimbriectomy and pomeroy''s thus reducing the risk factor to the minimum. The second opposite party who conducted the surgery was qualified, experienced and an expert in the said field. She is an Asst. Professor of obstetrics and Gynaecology, Medical College, Alleppey on leave. The operation was conducted as per the accepted surgical procedure. The operation was done carefully and there is no deficiency on the part of the opposite parties. After the operation on

27.12.1992 the complainant visited the outpatient department only on 13.2.1993 and met a Junior Doctor on duty. At that time the complainant did not have any complaints and had attended the outpatient department as a matter of routine checkup. Thereafter the complainant had visited the outpatient department only on 28.11.1993 and again consulted a Junior Doctor on duty. It was noticed by this doctor on examination that her abdomen had a mass of 5 months'' gestational size and the foetal heart sound was not audible. The complainant was asked to undergo ultrasound scanning immediately to identify the mass. But thereafter the complainant did not turn up. The other allegations regarding the treatment at elsewhere are not known to the opposite parties. There is no deficiency on the part of the opposite parties and the complaint is liable to be dismissed. Though filed an affidavit and also provided documents relied on the complainant did not comply with any directions. He also did not turn up or adduce evidence when the case was posted on 6.6.1996. The opposite parties were examined as RW1 and on behalf of them Exbts Rl to R9 were marked. We posted the case to enable the complainant to give evidence, even though the opposite parties had closed evidence and posted the case to 26.7.1996. Neither the complainant nor his Counsel was present. We heard the Counsel for the opposite parties.

7. FOLLOWING points arise for consideration. 1.Whether there is any deficiency on me part of the opposite parties? 2.Whether the complainants are entitled to get any compensation? 3.What is the order as costs ?

8. RW 1 is the second opposite party; she has given evidence in terms of the version filed on behalf of the opposite parties 1 and 2. She was cross -examined by the Counsel for the complainant but nothing has been elicited from the evidence of the RW1. She clearly stated that the operation that was done by bilateral partial salpingectomy and that was safest method but it is not 100% success and possibility of more failures is that it is done alongwith caesarean operation. Rw2 also in her evidence stated that there is no deficiency on the part of the opposite parties she was cross -examined at length but nothing could be brought out to discredit her testimony.

9. WE had occasion to consider a similar case in Chandralekha v. Vijaya Hospital and Another, appeal No. 829/94. In that case D & C operation was done on the complainant therein and she got pregnancy thereafter complaint was filed attributing deficiency. In our judgment in that case pointed out that there is no 100% guarantee of success of D & C operation and on failure deficiency cannot be attributed to the Doctor who conducted the operation. Sri, R.S. Kalkura appearing in this case for the opposite party placed many authorities to substantiate this contention that 100% success cannot be guaranteed in the case of a bilateral partial salpingectomy which is the name of the operation conducted in the case.

10. AT page 621 of principles of gynaecology by Sir. Normas Jettcole 5th edition the following passage occurs: "The only sterilization procedures in the female

which are both satisfactory and reliable are: resection or destruction of a portion of both fallopian tubes; and hysterectomy. No method, however, is absolutely reliable and pregnancy is reported after sub total and total hysterectomy, and even after hysterectomy with bilateral salpingectomy. The explanation of these extremely rare cases is a persisting communication between the ovary of tube and the vaginal vault. Even when tubal occlusion operation are competently performed and all technical precautions are taken, intrauterine pregnancy occurs subsequently in 0.3 per cent of cases. This is because an ovum gains access to spermatozoa through a recanalized inner segment of the tube. There is a clinical impression that tubal resection operations are more likely to fail when they are carried out at the time of caesarean section than at any other time. That fact that they occasionally fail at any time has led many gynecologists to replace the term sterilization by tuballigation or tubal resection in talking to the patient and in all records. This has real merit from the medico -legal standpoint and has always been my practice".

Our attention has been drawn to Munro Kerr''s Operative Obstetrics, 8th Edition, page 586 which reads as follows: No method of sterilization is entirely safe. A local tubal excision (with or without cornual resection) has been known to be followed by an ectepic pregnancy. Further collected no less than 67 such cases. Even hysterectomy has been followed by a pregnancy in the stump of a retained Fallopian tube: Komblatt described such a case. Garb has reviewed the subject very thoroughly and I reproduce a table, which summarizes his investigation: Relative Efficiency of Sterilization Methods (Garb) Operation No. of cases No. of failures Percentage All Procedures 29,496 210 0.71 Madlener 7,829 113 1.44 Pomeroy 5,477 22 0.40 Cornual resection 311 9 2.89 Irving modification 1,056 0 0 Others 4,823 66 0.45 It will be noted that the Irving technique is credited with complete success. Certainly its efficiency is very high, but failure is still possible and Hornstein "and keys have reported such case. One can imagine that the strap of tube is pulled forcibly into the uterine wall the ligature might slipped off allowing the tube to retract to its previous position".

11. WE also find the following passage at page 572 Clinical obstetrics, 8th edition by A.L. Mudaliar at page 572. "The overall failure rate in tubal sterilisation using various techniques is 0.5 per cent with Pomeroy''s technique it is about 0.2 per cent".

12. OUT attention is also drawn to the following passage at page 1098 in Williams obstetrics 14th edition. "Tubal sterilization carries certain risks, which must be carefully balanced before undertaking the operation. Moreover, as pointed out by Barnes and Zuspan, as well as McCoy, a few women regret the operation: most often they were women with small families who underwent tubal sterilization because of their own illness. Thompson and Baird reported that 87 per cent of 162 women studied were satisfied with their sterilizations. Very rarely do women request to have their Fallopian tubes reunited. Restitution of tubal continuity is technically feasible, with a rate of success no more than 50 per

cent".

We also find the following passage at page 551 of integrated obstetrics and gynaecology for Post Graduates by C.J. Dewhurst, 2nd edition: "Pregnancy following female sterilization Procedures: Follow -up is often difficult because of the small numbers who can be contacted and because failure may become evident only after many years. Follow -up studies should critically with these points in mind. Abdominal pregnancy has been reported even after hysterectomy when the appendages were conserved and all tubal operations have a failure rate. An overall rate of 0.71% in 29.4.1996 tubal sterilizations was quoted by Garb (1957) and it is generally agreed that Madlener procedures are the least reliable 1.5% (white 1996) Pomeroy rather more successful (0.17% failure) and Irving methods the best (Garb 1957) Overstreet 1964). It has long been stated that the failure rate for a stated method is increased upto six fold when it is but the reason was not known and more recently (Husbands et al. 1970)".

13. IN the light of the observations made by the above authorities and evidence of RW1 and RW2 it is clear that 100% success cannot be expected in the PPs Surgery conducted on the 2nd complainant though it is generally considered as the safest method. In the circumstances, we are unable to say that there is any deficiency on the part of the opposite parties in conducting the operation. We accordingly dismiss the complaint. However, we direct the parties to bear their respective costs. Complaint dismissed.

