(2016) 04 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

Case No : 2373 of 2011

A. PADMAVATHI — APPELLANT

Vs

DR. M. VIJAYENDRA & ANR. — RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Citation : 2016 2 CPR 662

Hon'ble Judges : S.M. Kantikar

Advocate : M. Vijayendra, Praseena Elizabeth Joseph

Judgement

1. The complainant Padmavathi (herein referred as "Patient") was suffering from recurring abdominal pain and uterine bleeding. She underwent Trans abdominal hysterectomy (TAH) at OP2 Heritage Hospital on 24.07.2004. It was performed by Dr. M. Vijayendra, OP1. She was discharged on 02.08.2004. After one week, she suffered abdominal pain and urinary obstruction. Therefore, she approached Sai Sadan Hospital, which in turn referred her back to OP2 hospital on 10.08.2004. But, the OP2 referred her to NIMS (Nizam Institute of Medical Science and Research Foundation) hospital for further treatment on 11.08.2004 wherein she was diagnosed as the case of post TAH with left ureteric injury with septicaemia. She was operated there on 17.08.2004 and

discharged on 08.09.2004. Thereafter, during continuous treatment, again she underwent another surgery on 09.12.2004. The doctor at NIMS opined that the initial surgery of TAH was not properly conducted by OP1, it caused ureteric injury. Hence, there was a leakage of urine into the abdomen leading to septicaemia. The patient incurred huge expenditure for the entire treatment. Therefore, patient filed a complaint before the District Forum, Hyderabad.

2. The District Forum dismissed the complaint. The complainant preferred first appeal before the State Commission which was allowed and directed the OP1 and 2 to pay jointly and severally Rs. 2 Lakhs to the complainant along with the cost of Rs. 3,000/-.

3. Therefore, against the impugned order of State Commission both the parties preferred these revisions. The Complainant filed Revision Petition No. 2373/2011 for enhancement of compensation whereas the OP Dr. Vijendra filed RP 593/2011 for dismissal of the complaint.

4. At length I have heard counsel for both the parties. The counsel Ms. Shiriyanjana Khosla for petitioner / OP vehemently argued that there was no negligence at all on the part of OPs. She explained the chronology of the events. She further submitted that the patient was anaemic having low platelet count. Therefore, prior to operation, patient was given transfusion of blood and platelet concentrates. The TAH operation was performed on 24.07.2004, it was uneventful. Patient was stable throughout the hospitalization and she was discharged on 02.08.2004.

5. It is further submitted that, 4 days after discharge, the patient had gone to Sai Sadan Hospital on 06.08.2004 and discharged on 08.08.2004. From there, patient was referred to OP again with the history of abdominal distension. The counsel for OP brought my attention to the cross examination of Dr. Shiv Kumar. The relevant part from cross examination is reproduced as below: "I mentioned consent may be obtained from the patient both anestheatist and suggen go hand in hand and obtain consent. I personally explained the patient and her husband about the high risk involved, the signature on the consent letter was obtained by duty doctor. I have not signed on the consent letter and there is no procedure of doctors signing on it. It is not correct that the duty doctors will obtain the signature of the patient in a blank form and thereafter the details are filled in. As per the standard books on gynaecology ureteric injury is one of the rare complications that takes after hysterectomy, witness says it will be a rare one.

6. The rival argument on behalf of complainant is that, the OP-1 is a surgeon, not a gynaecologist. He is not qualified to perform TAH operation. At the initial stage only, OP should have referred the patient to higher institute like NIMS. It was an act of omission by the OP1. No informed consent was taken, not explained about possible complications. The operation was performed on 24.07.2004 whereas; consent was taken on 22.07.2004. Thirdly, when the patient was referred back to OP1 on 10.08.2004, OP has not treated the patient properly but, referred her to NIMS to conceal his mistake. He brought my attention to the clinical findings and the discharge summary of the NIMS hospital and submitted that; overall patient incurred about more than 4 Lacs expenses towards her medical treatment.

7. After considering the facts, evidence and medical record , it is clear that the patient underwent TAH at OP2 hospital. The discharge summary (annex P3) clearly reveals that, patient

was discharged after 10 days of the hospitalization, her general condition was fair, vitals were stable and advised to consult hematologist at NIMS regarding thrombocytopenia. At the time of 2 admission on 10.08.2004, the patient had

complaints of abdominal distension, retention of nd urine for last 04 days. As per OP, patient was suffering from gall bladder stone also. Therefore, she was referred to NIMS for laparoscopic surgery. There was neutrophilic leucocytosis, cholestasis and ascites with pleural effusion. The OP gave treatment with catheterisation of urinary bladder, Ryle''s tube aspiration with injections of antacid and antibiotics. Thereafter,patient was referred to NIMS for further treatment.

8. It is pertinent to note that, State Commission clearly made observation on Ex. A6, that there was contrast leak into peritoneal cavity seen at SI joint. At the time of admission to NIMS, the history recorded is "suspected ureteric leak". The stenting was done and drainage study shows stricture at the site of injury with no contrast drainage and the stent was reinstated and planned for re-construction. The patient was discharged with urethral catheter. Even the culture reports at NIMS revealed the patient was suffering from infection i.e. sepsis. In this context, I prefer to rely upon the landmark judgment of Hon''ble Supreme Court in SAVITA GARG (SMT) v. DIRECTOR, NATIONAL HEART INSTITUTE 2004 CTJ 1009 (SC) (CP) wherein it is stated as follows: "when a prima facie case is established, it is the duty of the opposite parties to prove their case, since it is only the opposite parties who are aware of the exact line of treatment that has been given to the patient. It was also held by the Apex Court that once a claim petition is filed and the complainant has successfully discharged the initial burden that the hospital/clinic/doctor was negligent and that as a result of such negligence, the patient died, then in that case, the burden lies on the hospital and the doctor concerned, who treated the patient, to show that there was no negligence involved in the treatment."

9. It is also surprising to note that the Anaesthetist of the said hospital deposed that, there was no procedure of doctors signing on the consent form . Such submission is against the principle of informed consent.

10. I have perused medical literature and the text book of Shaw''s text Book of Operative Gynaecology; Te Linde''s Operative Gynaecology . The Ureteric injury is a rare and severe complication of pelvic surgery. If such injury is not recognized immediately, it may lead to anuria, fluid overload, renal failure and even death. The injury can either be caused by a ligation, transection, crushing, tethering or an excision of a portion of the ureter. In complete unrecognized ligation of the ureter, a section of the ureteral wall necrosis because of pressure-induced ischemia. The ischemic segment of the ureter eventually weakens, leading to urinary extravasation into the periureteral tissues. If the urinary extravasation drains into the adjacent peritoneum, urinary ascites may develop. If the urinary ascites is infected, peritonitis may ensue. If the peritoneum has remained closed, a urinoma may form in the retroperitoneum For the surgeon who is trying to do his best for the patient, this injury can deal a devastating blow to his or her morale. It is therefore incumbent on all practitioners performing procedures around the ureter to be aware of the spectrum of possible

injuries to the ureter, factors that increase the risk of injury and techniques for early recognition. Such knowledge will minimize the risk of inadvertent injury and if they occur allow expeditious recognition and referral to appropriate centres to facilitate their repair. 10. Therefore, on the basis of forgoing discussion, the complainant discharged her onus about alleged negligence. The OP must establish why there was injury to the ureter post operatively causing leakage of urine? Also, the complainant did not produce any cogent evidence or any justification to enhance the compensation in the instant case. Therefore,I do not find any apparent error in the well-reasoned order of the State Commission which has awarded just and fair compensation.

Accordingly, both the Revision Petitions are dismissed.

