

(2015) 12 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

Case No : 15 of 2015

**ARCHANA SHARMA & 2 ORS Vs NORTH STAR HOSPITAL & JOINT?
REPLACEMENT CENTRE & 4 ORS**

Date of Decision : 01-12-2015

Acts Referred:

Citation : 2016 1 CPJ 269 : 2016 1 CPR 54

Hon'ble Judges : J.M. Malik, S.M. Kantikar, Nikhil Jain

Judgement

1. The complainant's husband, Shri Jitendra Kumar Sharma, (since deceased), suffered fracture at the root of nose, in a car accident. He sustained contusion on the left side of forehead, just above the left eyebrow. He was taken to North Star Hospital & Joint Replacement Centre, Kanpur Nagar. The duty doctors, Dr. Ashutosh Trivedi, OP 3, Dr. Abhishek Trivedi, OP 4 and Dr. Saurav Gupta, OP 5, who were present in the hospital, decided to operate the patient. The complainant, Smt. Archana Sharma, expressed her apprehension about the treatment and CT scan was not seen by the specialist. However, at the insistence of the said doctors, the complainant gave her consent. The patient was comfortable, till 20.5.2012. On 20.5.2015, at around 6.00 p.m., Dr. D. K. Singh, OP 2, a Homeopath, in consultation with OPs 3 and 4, administered injections of Phenergan and Serenace to the patient. Thereafter, Dr. D. K. Singh, administered injection of Butrum 2 mg. It was administered in the presence of the father of the complainant and other family members. They resisted to giving the injection, because there was no pain to the patient. After injection of Butrum, the patient started perspiring heavily and his teeth were clenched. His nose had already been blocked due to nasal surgery. Hence, there was breathing difficulty. The Doctor took the patient to ICU, after 30 minutes. Thereafter, the doctors declared him "dead". The family members rushed to the ICU and were shocked to see that there were no necessary equipments like Oxygen Cylinder, therefore, it was not ICU but one ordinary room. The complainant paid, for the services at the hospital. Alleging medical negligence, the complainant filed a complaint before the State Commission Uttar Pradesh, Lucknow, on 17.10.2012.

2. The State Commission dismissed the complaint. Aggrieved by the order of

State Commission, the complainant has filed this first appeal.

3. We have heard the learned counsel Mr. Nikhil Jain for complainant/appellant. Counsel vehemently argued that the State Commission decided the case, after considering the written statement filed by the OPs at a very belated stage, after passing ex parte order. Therefore, this case should be remanded. The counsel brought our attention towards the State Commission's order dated 01.04.2013, it is reproduced as below: The complainant's advocate Sh. A. K. Singh & Sh. Naveen Kumar were present. The respondent's advocate Sh. Shiv Nath filed his power of attorney and they have been provided the copy of the complaint but they have not yet filed their written statement. Therefore, one sided proceedings are done against the respondents. The complainant is asked to file her complete evidence. The complaint is listed for hearing on 29.07.2013."

4. We are of considered view that, in such circumstances the complainant should have approached this Commission at the same time, but the complainant slept over the matter and filed this present appeal on 07.01.2015, i.e. after lapse of two years.

5. On merits, we have perused the observations of State Commission and relevant medical documents on file. We do not agree that consent for operation of the patient was given by the complainant under fear. The State Commission observed that : " In this respect as per case of the opposite parties the regular doctor of the deceased named Dr. Ravi Kumar was called and he had prescribed tablet Encorate 500 mg., Librate and Lopes injection, which are the medicines to be provided to alcoholic patient as anti-withdrawal and Dr. Ravi Kumar himself had prescribed Phenargan injection and Serenace injection to the deceased on 20-05-2012 at about 2.00 O'clock and the same were administered to the patient by staff nurse Toshima. The nursing chart in this regard is on record showing the proof of aforesaid facts. There is no rebuttal of these facts by the complainants ."

6. It was also recorded that pre-anesthetic checkup was conducted by Dr. Kajal Gupta, who recorded that "the patient used to take Alprax 40 tablet and he was having history of psychiatrist treatment."

7. No doubt, the patient suffered cardiac arrest, on 20.5.2012, at around 8.30 p.m. Dr. Kajal Gupta was called and the patient started CPR with endo-tracheal intubation in the O.T. Therefore, if the injection Butram had been given to the patient, the reaction would have been within five minutes of the operation i.e. patient might have developed Laryngospasm and Respiratory arrest, immediately.

8. The State Commission further observed that: "We have gone through the report of Ethical Committee. This report is based merely on the statements of persons of the complainant's side as has been stated the facts in the complaint too before us. Therefore, a report based on one sided person may be taken for enquiry and/or any action against Dr. D. K. Singh as has been indicated in the Ethical Committee report too but that report cannot be the proof of this fact that

injection Butrum was administered to the patient and that too by Dr. D. K. Singh. This fact remained unproved on record that Dr. D. K. singh had administered the alleged injection because this fact neither finds place in the history of treatment; nor there is any such evidence that such injection was purchased or brought for the purpose of treatment of the deceased."

9. It is pertinent to note that, one, Dr. Ravi Kumar, was a personal doctor of the patient. The fact is that the patient was a drug addict, chronic alcoholic and was not in a good health. On 20-05-2012, Dr.Ravikumar prescribed Tab Encorate 500 Mg., Tab Librate and injection Lopez. Along with Phenargan injection, Serenace injection and Alprax tablet, were also prescribed. There is no rebuttal of these facts by the complainant.

10. We have perused the proceedings and order of the Ethical Committee of U. P. Medical Council, Lucknow. As per their observation, Dr. D. K. Singh is a Homeopathic doctor and registered with Homeopathic Council working in the Hospital as an Administrator and not as a duty doctor, but the hospital record revealed that he is a duty doctor. According to the OPs 3 and 4, on the day when patient had expired, OPs 2 and 3 were not in the town. According to Dr. Kajal Gupta, the Anesthetist of the hospital, the pre-anesthetic check up (PAC) was normal. Nasal surgery and post-OP period were uneventful. She attended the patient at 8-8.30 p.m on 20.5.2012. The patient was pulse-less, his B.P. was not recordable, pupils were dilated. She started CPR with endo-tracheal intubation in the O.T., after 45 minutes, but the passed away. She also submitted that if any patient is given "Butram 2 amp (2mg) IV, within 5 minutes of the administration, patient may develop Laryngospasm & Respiratory Arrest. The Committee interrogated Dr. K. K. Tyagi, Cardiologist. He told that patient expired at 9.00 p.m. Even though, U.P. Medical Council, prima facie, held that Dr. D. K. Singh has been working as a duty doctor in allopathic hospital, therefore, it was directed to inform the Homeopathic council for necessary action. Even in this report, we do not find that Dr. Singh has administered injection "Butram". We have seen the entire medical record, but we do not find anything about injection "Butram; in the case sheet.

11. We take a clue from the judgment of Hon"ble Supreme court in Jacob Mathews Case (2005) 6 SCC 1 , wherein it was observed by Hon"ble Supreme Court as; "When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions."

12. On the basis of medical record and the findings of the State Commission, we do not find any negligence on the part of OPs. There is no evidence to prove that injection "Butram" was given by OP 2. The post mortem report is also inconclusive, despite the proper treatment. As per the standard of practice, the

patient passed away for which we cannot hold the OP responsible, in this case.

13. We dismiss this appeal for lack of merit.