

(2009) 04 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Arun Dewangan (Dr.)

APPELLANT

Vs

Madhu (Preti Chandel) And Anr.

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : 2009 2 CPJ 315

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Advocate : R.K.BHAWNANI

Judgement

1. HEARD learned Counsel for the petitioner. This is yet another case of a non - Allopathic Doctor who uses all his muscle power to press the abdomen of the fully pregnant lady to deliver the baby. The baby died due to asphyxia within 24 hours of the birth. Medical science knows the use of forceps and cesarean section since several years. In this case the first delivery was by cesarean and, therefore, naturally second delivery also the doctor could have thought about cesarean surgery. An Ayurvedic physician decided to conduct the delivery rather than referring the pregnant lady to a qualified Gynaecologist. Not only the child died, the patient also suffered due to abnormal pressure put on the abdomen as there was damage to the vagina and uterus.

2. IT is the case of the complainant that Rs. 3,800 was paid to the petitioner -Dr. Arun Dewangan who accepted the money but did not issue any receipt. The District Forum on the basis of evidence and also material available on record and also of the expert opinion given by Dr. V.P. Khute, Gynaecologist who was examined as Court witness and also Dr. Narendra Gandhi who was examined as complainant witness came to the conclusion that there was medical negligence in this case and accordingly awarded Rs. 40,000 as compensation with Rs. 1,000 as litigation cost to be paid within a period of one month, if not paid, interest @ 8% be payable by the opp. party who is the petitioner before us.

3. PETITIONER as well as the complainant filed cross -appeals before the State Commission, Chhattisgarh. Petitioner filed the appeal for dismissing complaint and the complainant filed the appeal for enhancement of compensation. The

State Commission on re-appraisal of the facts and circumstances before it, enhanced the compensation to Rs. 50,000 along with Rs. 5,000 towards expenses incurred by the complainant for subsequent treatment together with Rs. 5,000 towards mental agony and harassment caused to the complainant. The State Commission also stipulated that the above amount shall be payable to the complainant within one month from the date of the order together with interest @ 9% p.a. from the date of the complaint. In default, the interest @ 12% p.a. shall be payable. Cost of Rs. 2,000 was also imposed on the complainant. Dissatisfied with this order, the petitioner has filed this revision petition before us. Learned Counsel for the petitioner submitted that no payment has been made by the complainant to the petitioner. Even assuming that if some payment has been made, no receipt has been produced before the lower Fora as a proof of having made the payment. He also stated that there is no direct evidence to show that the petitioner had performed the delivery as a result of which there was damage to the uterus and vagina and the perineum of the mother and also has resulted in death of the child. Therefore, he submits that the revision petition may be allowed.

4. WE have gone through the records of the case as also the judgments of the lower Fora.

5. THE State Commission has analysed the evidence of Dr. Khunte, Gynaecologist who was examined as a Court witness by the District Forum and also Dr. Narendra Gandhi who was a Pediatrician. An extract of the analysis made by the State Commission is reproduced below - It is noted that Dr. V.P. Khunte, Gynaecologist examined as a Court witness by the District Forum has stated in categorical terms that in case there is obstruction in the passage during delivery the same may cause swelling of head of the new born baby and in case of obstruction the foetus may also have breathing problem and in case the delivery is conducted by putting pressure on the abdomen, damage to uterus, vagina and perineum may also occur. This statement supports the averments of the complainant that delivery was conducted by putting repeated pressure on the abdomen of complainant No. 1 and there was swelling in the head of the child. Dr. Narendra Gandhi was examined by the complainant before the District Forum. The said doctor had treated the new born baby. It was stated by the said doctor that the child was in Gaspic respiration condition and there was swelling on his head at the back at right side and the child was not weeping. It is also noted that the police had investigated the matter and during course of investigation had asked the aforesaid treating doctor to give pointwise information regarding the date of discharge of the child and his condition. Dr. Narendra Gandhi has given information on the aforesaid points vide letter addressed to Station Officer Incharge, Chikhli, Rajnandgaon marked as OP A -8. It was mentioned in the said document that the child did not weep after its birth on 28.3.2005 and when the child was brought to the doctor it was in gaspic respiration condition and there was caput succedaneum i.e. swelling on the head. As per Taber's Cyclopedic Medical Dictionary the word caput" means head" and succedaneum" means

swelling on the present part of the foetus head during labour". It is admitted position that the child died at 6.35 p.m. merely after 2 hours of its birth. Dr. Narendra Gandhi has also stated in OP A -8 that the cause of death could be birth asphyxia".

6. ACCORDINGLY, we have no doubt that there was gross medical negligence on the part of the petitioner. The Hon'ble Apex Court in Poonam Verma v. Ashwin Patel and Ors., II (1996) CPJ 1 (SC), held that the action of the Homeopathic doctor who prescribed Allopathic medicine and administered it was an actionable negligence. The ratio of this case is applicable to the case on hand. Taking into consideration of that case, the patient had suffered several injuries and a new born child has died, the compensation awarded by the State Commission cannot be construed to be on the higher side by any stretch of imagination. Therefore, there is no merit in this revision petition. Accordingly, it is dismissed. There shall be no order as to cost. R.P. dismissed.