

(2009) 02 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

Azizul Haq Khan (Dr.) @ Lallan

APPELLANT

Vs

Shyamapati and Ors.

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : 2009 0 NCDRC 49 : 2009 2 CPJ 49 : 2009 2 UC 783

Hon'ble Judges : R. C. Jain, Presiding Member and Anupam Dasgupta, Member

Final Decision : Appeal dismissed

Judgement

1. MR . Anupam Das Gupta, Member: These cross appeals, impugning the order dated 21.7.2005 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (hereafter, the "State Commission") in Complaint Case No. 109 of 2001, have been filed by the original opposite party No. 1 (hereafter referred to as "Dr. Khan") and the original complainants (respondents in Appeal No. 418/appellants in Appeal No. 148 and hereafter referred to as the complainants"). By this order, the State Commission allowed the complaint, holding Dr. Khan guilty of medical negligence (deficiency in service in providing medical treatment to complainant No. 1) and directed him to pay to the complainants compensation of Rs. 75,000 within two months of the date of the order. Dr. Khan has filed his appeal (No. 418 of 2005) seeking setting aside of the impugned order while, as a response and hence after a delay of 195 days, the original complainants, have filed their appeal (No. 148 of 2006) seeking enhancement of the compensation awarded by the State Commission. We dispose of these two appeals by this common order. 2(i). The complaint before the State Commission stated that complainant No. 1, Shyamapati, a woman of about 70 years at the relevant time, was "usually sick due to her old age". In January 2001, she had fever and cough (described in the complaint as "Judi Bukhar" and in the appeal memorandum as "Malarial fever"). On 21.1.2001, complainant Nos. 2 and 3 (Shyamapati's son and grand son) took her to Dr. Khan for treatment of her complaints. Dr. Khan, a Unani physician Holding the degree of "Fazile -Tibb -O -Jarahat (B.U.M.S.)" awarded by the Kanpur University, Kanpur, administered some injections and prescribed some allopathic

(referred to in the complaint as "English type") medicines for her, without first advising or requiring her to undergo any prior pathological (or other diagnostic) tests. Though she continued with this line of treatment for the next few days by visiting the clinic ("Dawakhana") of Dr. Khan (in the appeal memorandum, it is, however, claimed that she was "admitted" to the clinic of Dr. Khan), her condition did not improve and on 25.1.2001 her condition deteriorated particularly. Despite requests to Dr. Khan, he did not go and see the patient at her house and only gave some tablets. She had to be then taken to the King George's Medical College and Gandhi Memorial and Associated Hospitals (hereafter referred to as "GMAH"). Lucknow, where she was treated as an indoor patient from 26.1.2001. There seems to be some confusion in the complaint regarding the dates of Shyamapati's treatment at the GMAH but the Hospital records filed by the complainants before the State Commission show that she was treated as an indoor patient at the GMAH, first in the Department of Medicine, during 26.1.2001 - 3.2.2001 and then the Department of Surgery, during 7.2.2001 to 17.2.2001.

(ii) On discharge from the GMAH on 17.2.2001, Shyamapati went home with a recommended line of treatment (medication). However, as her condition did not improve, she was finally taken to the Balrampur Hospital, Lucknow and admitted there on 3.3.2001. It was here that she underwent amputation of all the phalanges (fingers and toes) of both hands and both feet on 15.3.2001 and 29.3.2001 and was finally discharged on 26.4.2001.

(iii) Against this background, the complainants, have sought to make out their case for medical negligence on the part of Dr. Khan (and consequent compensation of Rs. 10.86,600) on threefold contentions;

(a) According to the Discharge Summary of Shyamapati issued by the Department of Surgery of the GMAH, she was diagnosed, at the stage of admission, as suffering from "Drug induced peripheral thromboangiitis involving all tips and toes (illegible) dry gangrene" and at the stage of discharge, as suffering from "drug induced gangrene of tips and toes".

[Emphasis supplied]

(b) The "drug induced" dry gangrene was on account of the high potency allopathic drugs administered by Dr. Khan in January 2001.

(c) Dr. Khan, being a B.U.M.S. physician, was medically and legally not competent to administer allopathic drugs of high potency.

3. Some important points, emerging from these medical records need to be discussed and clarified at this stage:

(a) The "Discharge Ticket" dated "3.2.01" of the Department of Medicine, GMAH is, signed by one Dr. Ashok Chandra, a Professor of a Medicine Unit at the GAMH, and mentions, inter alia, "Diagnosis -PERIPHERAL GANGRENE (DRY)? VASCULITIS. ANA AWAITED". This discharge ticket is thus prior to her (second)

admission to the GMAH, in the Department of Surgery that has been mentioned in the complaint. Surprisingly, this treatment of Shyamapati at the Department of Medicine of the same GMAH is not referred to, even obliquely, in the complaint, and, more surprisingly, there is no mention thereof in the discharge summary of the Department of Surgery, it is clear, however, that the diagnosis of "peripheral gangrene (dry)" by the Department of Medicine was with a question mark (i.e., doubtful to the doctors suggesting the diagnosis) while that of "vasculitis" was not so qualified. Moreover, this discharge ticket stated that the "ANA" test report was awaited.

(b) A search of the web -based medical literature (www.emedicinehealth.com) shows the following:

Gangrene is a medical term used to describe the death of an area of the body. It develops when the blood supply is cut off to the affected part as a result of various processes, such as infection, vascular (pertaining to blood vessels) disease, or trauma. Gangrene can involve any part of the body; the most common sites include the toes, fingers, feet, and hands.

Dry gangrene is caused by a reduction of blood flow through the arteries. It appears gradually and progresses slowly. In most people, the affected part does not become infected. In this type of gangrene, the tissue becomes cold and black, begins to dry, and eventually sloughs off. Dry gangrene is commonly seen in people with blockage of arteries (arteriosclerosis) resulting from increased cholesterol levels, diabetes, cigarette smoking, and genetic and other factors.

[Emphasis supplied]

(c) "Vasculitis", on the other hand, is described on the well -known Mayo Clinic website (www.mayoclinic.com) as follows:

Vasculitis is an inflammation of your blood vessels. Also called angiitis, vasculitis causes changes in the walls of your blood vessels, including thickening, weakening, narrowing and scarring. Inflammation can be short -term (acute) or long -term (chronic) and can be so severe that the tissues and organs supplied by the affected vessels don't get enough blood. The shortage of blood can result in organ and tissue damage, even death.

There are many types of vasculitis and, although rare, vasculitis can affect anyone. Some age groups are affected more than others, depending on the type of vasculitis. Some forms of vasculitis improve on their own, but others require treatment -often including taking medications for an extended period of time.

The signs and symptoms of vasculitis vary depending on which blood vessels and, as a result, which organ systems are affected. However, general signs and symptoms that most people with vasculitis experience include Fever, Fatigue, Weight loss, Muscle and joint pain, Loss of appetite, Nerve problems, such as numbness or weakness.

Each type of vasculitis can also cause specific signs and symptoms, such as:

Buerger's disease. Also called thromboangiitis obliterans, this condition causes inflammation and clots in the blood vessels in your extremities. Signs and symptoms can include pain in your hands, arms, feet and legs, and ulcers on your fingers and toes. This disorder is strongly associated with cigarette smoking.

[Note: Other forms of vasculitis described on this website are not mentioned here, as they are not material for this case]

(d) As noticed, the discharge ticket referred to at (a) above mentions "ANA awaited". "ANA" here clearly refers to the "antinuclear antibody" blood test. This test is described on the Mayo Clinic website as:

An antinuclear antibody (ANA) test is often useful in the evaluation of connective tissue diseases, such as lupus. This blood test detects the presence of certain antibodies made by your immune system. People with lupus typically test positive for antinuclear antibodies. However, a positive ANA blood test doesn't necessarily mean you have lupus. Other conditions may cause a positive antinuclear antibody test, including: Scleroderma, Rheumatoid arthritis, Sjogren's syndrome, Hashimoto's thyroiditis, Autoimmune hepatitis. Some viral infections, Type 1 diabetes, Addison's disease.

In addition, certain medications, may cause a positive antinuclear antibody test. These include: Methyldopa (Aldomet), Tumor necrosis factor (TNF) blockers, such as etanercept (Enbrel) and infliximab (Remicade).

If you have a positive antinuclear antibody test, further testing is needed to establish a specific diagnosis. Additional tests to diagnose lupus may include blood counts, kidney and liver assessments, urinalysis, chest X-ray, electrocardiogram (ECG), erythrocyte sedimentation rate test, and other antibody tests that are more specific for lupus.

[Emphasis supplied].

(e) The "Discharge Slip" of the Balrampur Hospital mentions, "Diagnosis - Gangrene of terminal phalanges of both hands and both feet". There is no mention of "drug-induced" gangrene in this slip either.

4. We may now summarise the conclusions from these medical records:

(a) The first discharge ticket (for the period 26.1.2001 -3.2.2001) at the GMAH, Medical Unit, diagnosed Shyamapati's ailment as peripheral gangrene (?) and vasculitis with the ANA (blood test) report awaited. We see from the medical literature cited above that vasculitis is a disease of the blood vessels and one of the forms of vasculitis is also called "thromboangiitis obliterans", which is recorded (as "Thromboangiitis") in the subsequent discharge summary of Shyamapati (for the period 7.2.2001 to 17.2.2001) issued by the Department of Surgery, GMAH. This condition causes inflammation and clots in the blood vessels in the extremities, which can lead to dry gangrene of the fingers and toes - this

is also clear from the medical literature on dry gangrene cited above.

(b) The mention of the ANA test in the discharge ticket of the Medicine Unit of the GMAH points to the doctors concerned also suspecting the possibility of an autoimmune disease like the lupus (systemic lupus erythematosus - SLE), which too may lead to problems of the extremities like hands and feet, due to inadequate circulation of blood thereto and gangrenous conditions following there from.

(c) The last available medical report, viz., the discharge slip of the Balrampur Hospital also confirms gangrene, as a result of which all the fingers and toes of Shyamapati had to be amputated.

(d) The significant points, therefore, are: (i) Apart from the single observation in the (second) discharge certificate issued by the Department of Surgery of the GMAH, no where - either in the relevant medical records or in the medical literature - is there a reference to any form of "drug -induced" dry gangrene. On the other hand, this discharge certificate itself goes on to record "thromboangiitis" which is a form of "vasculitis", (ii) Further, dry gangrene appears gradually and progresses slowly. Clearly, therefore, Shyamapati's dry gangrene, even if it was drug -induced (if that were possible at all), could not have developed during the admittedly few days (21 -25.1.2001) for which she took the medicines prescribed by Dr. Khan.

5. On the questions of (a) Dr. Khan's competence, under the Government Regulations concerning permissibility of a B.U.M.S. degree -holder, to administer allopathic medicines to complainant No. 1, and (b) the alleged high potency of the said drugs being a cause of Shyamapati's (drug -induced?) dry gangrene leading ultimately to loss of all her fingers and toes as a result of amputation, some observations are called for:

(a)(i) Dr. Khan's Counsel before the State Commission had drawn the latter's attention to the judgment of the Apex Court in the case of Dr. Mukhtarchand and Ors. v. State of Punjab and Ors. : (1998) 7 SCC 579. In this case, after a wide - ranging review of the Medical Council Act, 1956, the Drugs and Cosmetics Act, 1940, the Drugs and Cosmetics Rules, 1945, the Indian Medicine Central Council Act, 1970, several State relevant legislation and notifications issued States under the Drugs and Cosmetic Rules, etc., the Apex Court clarified a host of contentious issues concerning the practice of medicine in India and held inter alia as under:

38. For the present discussion, the germane provision is Section 15(2)(b) of the 1956 Act which prohibits all persons from practising scientific medicine in all the branches in any State except a medical practitioner enrolled on a State Medical Register. There are two types of registration as far as the State Medical Register is concerned. The first is under Section 25, provisional registration for the purpose of training in the approved institution and the second is registration under Section 15(1). The third category of registration is in the Indian Medical Register which the Council is enjoined to maintain under Section 21 for which

recognised medical qualification is a prerequisite. The privileges of persons who are enrolled on the Indian Medical Register are mentioned in Section 27 and include the right to practise as a medical practitioner in any part of India. "State Medical Register", in contradistinction to "Indian Medical Register", is maintained by the State Medical Council which is not constituted under the 1956 Act but is constituted under any law for the time being in force in any State; so also a State Medical Register is maintained not under the 1956 Act but under any law for the time being in force in any State regulating the registration of practitioners of medicine. It is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the "recognized medical qualification" which is a prerequisite only for being enrolled on the Indian Medical Register but not for registration in a State Medical Register. Even under the 1956 Act, "recognized medical qualification" is sufficient for that purpose. That does not mean that it is indispensably essential. Persons holding "recognized medical qualification" cannot be denied registration in any State Medical Register. But the same cannot be insisted upon for registration in a State Medical Register. However, a person registered in a State Medical Register cannot be enrolled on the Indian Medical Register unless he possesses "recognized medical qualification". This follows from a combined reading of Sections 15(1), 21(1) and 23. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practise allopathic medicine under Section 15(2)(b) of the 1956 Act.

[Emphasis supplied]

(ii) The State Commission also had before it a copy of the Government of Uttar Pradesh Notification (in Hindi), purporting to be a list of recognised institutions with their respective degrees and diplomas, issued by that Government authorising medical practice only in Uttar Pradesh. This list includes, at serial number 26, the degree of Fazile -Tibb -O -darahat awarded by the Kanpur University, Kanpur. Attached to this list are some Important Guidelines ("Avashyak Nirदेश"). The guideline at serial number 9 thereof, translated into English, reads, "A registered Vaidya/Hakeem may in his practice use allopathic medicines used in modern medicine".

(iii) Though some of these find mention in the impugned order, the State Commission has clearly failed to appreciate these facts in the light of the ruling of the Apex Court cited supra.

(iv) In other words, Dr. Khan was, by virtue of his B.U.M.S. degree (of the Kanpur University) in Unani Medicine, legally competent to administer allopathic medicines so long as he practised in Uttar Pradesh.

(b)(i) The State Commission has fastened the liability of medical negligence on Dr. Khan on the ground that he prescribed allopathic medicines of "high potency" without first requiring Shyamapati to undergo diagnostic tests and that, in turn,

resulted in her developing "drug -induced" gangrene of all the fingers and toes.

(ii) As noticed already, Shyamapati was under the treatment of Dr. Khan only for a few days in late January 2001 and this could have, by no stretch of imagination, led to "drug -induced" dry gangrene, even if such a variety of gangrene were assumed to be recognised in medical literature. Moreover, the State Commission was in no position to comment on, leave alone holding, the "potency" of the allopathic medicines administered by Dr. Khan as "high" and coming to a finding of medical negligence on his part on that score.

6(i) However, what is important in this case has unfortunately been altogether missed out by the State Commission. In his written version, Dr. Khan states,".....the contention of the complainants that they came to the clinic of Opposite Party No. 1 with his mother on 21.1.2001 and the Opposite Party No. 1 immediately attended, examined well and clinically diagnosed as case of Influenza with Chest Congestion and given required medicines and injections, are admitted."

(ii) The main grounds in the appeal of Dr. Khan are that what he prescribed were indicated for the patient and some of those medicines were later also prescribed by GMAH and the Balrampur Hospital and that, secondly, there is no variety of dry gangrene which can be "drug induced". Suffice it to observe that in view of what we have discussed below, the first ground is not valid while we have not held the second against him.

(iii) Available on the record is one prescription of Dr. Khan which is dated 10.3.2001. In this prescription, the drugs prescribed for Shyamapati's treatment for 21.1 -24.1.2001 are recorded. As stated in the complaint, this prescription was obtained by complainant Nos. 2 and 3 when they went back to Dr. Khan after Shyamapati had been admitted to the Balrampur Hospital as an indoor patient.

(iv) Therefore, in addition to what we have already observed regarding the inappropriateness of the diagnosis of "drug induced" dry gangrene, it is also clear that prima facie, no record of the medicines prescribed by Dr. Khan for Shyamapati was available to the treating surgeons at the GMAH in February 2001 when they diagnosed her condition as "drug induced" gangrene of the fingers and toes of both hands and feet. It is, therefore, further surprising that these surgeons came to the conclusion of "drug induced" gangrene on the say so of the complainants, particularly when they did not even acknowledge the record of the immediately preceding diagnosis and treatment by the Department of Medicine of the same hospital.

(v) Dr. Khan's prescription dated 10.3.2001 shows that he did not mention either the history of complaints of the patient or his clinical diagnosis; he did not even record the pulse rate, blood pressure and temperature. and yet, he prescribed medicines like "Injection Xone, "Injection Gentycin", Ciprofloxacin, "Asthalin", "Deriphyllin", "Nutrolin", "Avil", etc. Moreover, as it was written much

after the event, this so -called prescription gives the impression that all these medicines were prescribed and administered on the same day, though the period is recorded as -21 - 25.1.2001. The literature on drugs placed on record by the same Dr. Khan along with his memorandum of appeal shows that "Xone" is one of the trade names of a generic medicine called "Ceftriaxone", which is indicated for meningitis, septicæmia, typhoid, urinary tract infection and prophylaxis in surgical infections. "Gentycin" is also a trade name of the broad -spectrum antibiotic Gentamicin the indications for which are "valuable for critically ill patients with impaired host defence; pseudomonas (a variety of bacteria that are known for antibiotic resistance and are one of the principal causes of infections among hospitalised patients), burns, urinary tract infection, lung abscesses, osteomyelitis, middle ear infection, septicæmia, meningitis caused by gram negative bacilli." Ciprofloxacin is a broad -spectrum fluoroquinolone indicated for a host of diseases caused by gram -positive or gram -negative bacteria, including respiratory tract, gastro intestinal tract, urinary tract, E.N.T., intra -abdominal, skin and soft tissue, gynecological, bone and joint, and severe systemic infections and gonorrhoea. "Asthalin" is a bronchodilator and mast cell stabiliser for bronchial asthma as is Deriphyllin. "Avil" is an anti -allergy medication and "Nutrolin" is a nutrient.

(vi) The preceding, literature -based description of the indications of the various allopathic medicines/injections prescribed by Dr. Khan clearly demonstrates that he had absolutely no clue of what he was doing - he prescribed a veritable cocktail of allopathic medicines for Shyamapati that were meant for treatment of diseases as wide -ranging as to include meningitis, septicæmia, typhoid, urinary tract infection, prophylaxis in surgical infections, impaired host defence; pseudomonas, burns, lung abscesses, osteomyelitis, middle ear infection, respiratory tract, gastro intestinal tract, intra -abdominal, skin and soft tissue, gynaecological, bone and joint, and severe systemic infections and gonorrhoea, and bronchial asthma! All this in the name of being authorised (which is not in doubt, legally) and competent to prescribe allopathic medicines on the strength of his "Fazile -Tibb -O -Jarahat (B.U.M.S.)" degree!

(vii) Referring to the "Bolam test", upheld by the Apex Court in several cases of medical negligence, we may conclude that this is, by no stretch of imagination, what a physician of ordinary skills and ordinary prudence would be expected to do for a patient who had come to him with an initial set of symptoms which he claimed he had diagnosed as influenza and chest congestion. First, he did not write out a proper medical record, including history of complaints, vital parameters as observed and clinical diagnosis -in fact, he did not write any contemporaneous document at all when he examined Shyamapati on 21.1.2001. Secondly;, Dr. Khan's diagnosis of influenza and chest congestion was way off the mark in view of the subsequent diagnosis of dry gangrene. Thirdly, and most important, it does not need any medical expertise to see that the medicines and - injections that he did prescribe, as per a prescription written after six weeks of his treatment, reflected clear lack of correlation with his claimed diagnosis of

influenza and chest congestion. It is also not that Dr. Khan had just started practising by 2001, he was quite experienced, as can be inferred from the year of his degree (1973).

(viii) Therefore, we have no hesitation in holding Dr. Khan guilty of medical negligence in treating Shyamapati on four counts: (a) he did not record a proper prescription at the time of examination of the patient; (b) the prescription, written after six weeks of the treatment, did not reflect any clinical observations, diagnosis, etc.; (c) he clearly failed to diagnose the ailment of Shyamapati correctly; and (d) he prescribed a rather wide range of medicines that had all the attributes of an "overkill" with respect to the ailments which Dr. Khan says he diagnosed Shyamapati with.

(ix) We need not emphasise that these are not the reasons for which the State Commission held Dr. Khan negligent in the impugned order.

7(i) This brings us to the question of the compensation to which the complainants would be entitled in this case.

(ii) For that, we recapitulate that at the relevant time Shyamapati was a 70 year old woman, without any independent income and one who was admittedly usually sick because of her age.

(iii) Within a matter of days of visiting Dr. Khan on 21.1.2001 for treatment of her complaints of fever and cough, she was diagnosed with dry gangrene of the fingers and toes of both hands and feet by the GMAH, Lucknow - a diagnosis clearly confirmed by the Balrampur Hospital, Lucknow. The standard treatment of dry gangrene, as the medical literature on the subject shows, consists of selected antibiotics and, that failing, amputation of the affected limbs is the answer. The conservative line of treatment, viz., administration of antibiotics, was followed by the Department of Surgery, GMAH, Lucknow from where she was discharged on 17.2.2001. That did not help Shyamapati and she went to the Balrampur Hospital, Lucknow in early March 2001, on the ground, according to the complaint, that the treatment at the GMAH was expensive. At the Balrampur Hospital, all her fingers and toes were amputated.

(iv) The expenses incurred by the complainant Nos. 2 and 3 on Shyamapati's treatment at the GMAH, Lucknow and the Balrampur Hospital, Lucknow have not been proved in the complaint, there is a mere mention of an expenditure of Rs. 600 on the fees of and medicines prescribed by Dr. Khan and of Rs. 86,000 in respect of the subsequent treatments at the GMAH and Balrampur Hospital respectively. The latter hospital -based expenses could have been easily proved by producing the bills and receipts.

(v) These hospital -based expenses were in any case necessary for the treatment of the dry gangrene of Shyamapati's fingers and toes. More important, the expenses on the hospital -based treatment of Shyamapati for her gangrene, resulting ultimately in the amputation of all fingers and toes, cannot be

attributed to the negligence on the part of Dr. Khan, in view of our finding that the dry gangrene could not have been induced by the medicines prescribed by Dr. Khan -his negligence lay in the areas already noted.

(vi) There can also not be any case for higher compensation to the complainants on account of Shyamapati's loss of limbs due to amputation because the facts and circumstances of the case amply show that such amputation was the only remedy available for saving her life in 2001, given the stage of progress of her gangrene. In this connection, the reported observations of the surgeon of the GMAH regarding the need for amputation, mentioned in paragraph 9 of the complaint, are relevant.

8. Through a miscellaneous application, the complainants brought to the notice of this Commission that Shyamapati died on 21.12.2006. i.e., during the pendency of this appeal. Accordingly, deletion of Shyamapati from the array of parties was allowed by the order of 23.7.2008.

9. Therefore, in our view, a consolidated compensation of Rs. 50,000 only would be adequate in this case, mainly as a reminder to Dr. Khan of his duties and responsibilities as a physician under the relevant laws of the land. Accordingly, we partly allow Dr. Khan's appeal, set aside the order of the State Commission and also dismiss the appeal of the complainants and direct that Dr. Azizul Haq Khan shall pay to complainant Nos. 2 and 3 a consolidated compensation (inclusive of costs) of Rs. 50,000 (Rupees fifty thousand) only, within four weeks from the date of this order.