

(2003) 09 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

BOMBAY HOSPITAL And MEDICAL RESEARCH CENTRE

APPELLANT

Vs

KRISHNABEHARI M.AGGARWAL

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Citation : 2003 4 CPJ 61

Hon'ble Judges : K.S.Gupta , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. APPELLANT, Bombay Hospital & Medical Research Centre was the opposite party before the State Commission where the complainant Mr. Krishnabehari M. Aggarwal and his three minor children had filed complaint alleging medical negligence on the part of the appellant hospital.

2. UNDISPUTED facts of the case are that the deceased Mrs. Kamlesh Aggarwal had a history of chest pain, retrosternal heavyness since 5.11.1993 which increased at 11 p.m. associated with profuse perspiration, vomiting, radiating pain to both upper limbs, back and jaw. She was under treatment at Dr. Rane's Hospital in Bombay. On 8.11.1993 at 11.30 a.m. the patient became restless; ECG showed complete heart block. Heart rate came down to 32-35/minute and B.P. dropped down to 90 mm Hg Systolic. Emergency pace making was done; diagnosis was Diabetes Mellitus for which Tablet Dabenese was being given as also Acute Inferolateral wall Myocardial, Infraction with C HB, with decapitation of "R" value in V1 to V3 ASMI. It was in this condition and on the basis of the said diagnosis, that the patient was shifted in the van of the appellant accompanied by one Dr. Vaswani, to the appellant Bombay Hospital for better management. She is said to have been admitted in that Hospital at about 7 p.m. on 8.11.1993 under the care of Cardiologist Dr. P.L. Tewari. Admittedly, besides other tests Blood Sugar Tests were carried out. Report dated 8.11.1993 of Department of Pathology of Appellant Hospital indicates Blood Sugar 734 mgms. per 100 cc. Reading on 9.11.1993 for the same was 580 mgms per 100 cc. Case of the complainant is that no Senior Doctor attended on the patient during her

total stay of about 15 hours in the I.C.U. of the appellant except for a very brief visit of Dr. P.L. Tewari. More importantly knowing fully well that the patient is a known case of Diabetes Mellitus, yet between 7 p.m. on 8.11.1993 to 8 p.m. on 9.11.1993 Insulin was not administered to control the diabetes which was perhaps the cause of all the complication. The patient died on 9.11.1993 at about 10 a.m. Cause of death is given as "Cardio Respiratory Failure". Immediate cause is given as "Acute myocardial Infarction". Other significant condition mentioned are "Diabetes Mellitus". It is the case of the complainant that it is absence of control of "Diabetes Mellitus" which led to the death of her wife. It is in these circumstances that a complaint was filed by the respondent before the State Commission alleging medical negligence and praying for award of Rs. 10 lakhs as compensation for self and three children. After hearing the parties and perusal of material on record, State Commission held the appellant negligent and awarded compensation of Rs. 4.50 lakhs alongwith interest @ 12% to the complainants - hence this appeal.

Even though as many 79 grounds of appeal have been enumerated, most of them repetitive, we were saved the agony of commenting on each of them, as the learned Counsel for the appellant, helpfully and mercifully pressed only two grounds to set aside the order of the State Commission. Firstly, there is not a word against the appellant in the complaint. No specific instance of negligence has been alleged much less proved against the appellant and secondly, the complaint should have been dismissed by the State Commission for non-joinder of parties. Repeated negligence is alleged against Dr. Tewari, the Cardiologist Consultant under whose care the deceased was, but he has not been made a party. What the appellant does in to provide the infrastructure and they provided the best care. Dr. Tewari, an Honorary Cardiology Consultant was the main person, but he has not been made a party. What prevented the complainant to make Doctor a party under whose care the patient was in the appellant Hospital ? Admittedly he was incharge of the case. It is also the appellant's case that they were not given an opportunity to file their affidavits or to cross-examine the complainant's main witnesses. On all these grounds, the appeal needs to be allowed and complaint needs to be dismissed.

3. WE heard the arguments advanced by the parties and perused the material on record. What we find is that complainant states in Para 4 of this complaint : "She was admitted in Bombay Hospital at about 7.00 p.m. on 8th November, 1993 after having been brought from Dr. Rane's Hospital by Dr. Vaswani of Bombay Hospital in the hospital's own cardiac van. Dr. Vaswani of Bombay Hospital was explained in my presence by Dr. Rao (of Dr. Rane's Hospital), the full history of the case, that she was a diabetic patient and the complete details of the treatment administered right from the time of admission on 5th evening till discharge on 8th afternoon. The case history prepared by Dr. Rane's Hospital (Exhibit A) was handed over at Dr. Rane's Hospital to Dr. Vaswani for follow-up treatment. This was returned to me by Bombay Hospital after completing the admission formalities in the late evening same day, i.e. 8.11.1993."

In the written version filed by the appellant, this is what they had to say on this para. "With reference to para 4, the opposite party submits that what is set out therein is substantially correct. However, the opposite party states at the cost of repetition that the patient's condition was severely critical at the time of admission."

(Emphasis supplied)

4. FEW things are clear from these paras, like that when the deceased was shifted to the appellant Hospital, this was done on the "van" provided by the appellant. Doctor Vaswani of the appellant Hospital came with the van, case history of Dr. Rane's Hospital was handed over to the accompanying Doctor Vaswani. One needs no special knowledge to know after going through the case history, that deceased indeed was having Acute Inferolateral wall Myocardial Infarction with Diabetes Mellitus. It is also on record that during this shifting deceased was on insulin treatment in the van. Two tests of Blood Sugar carried out in the appellant Hospital - one on 8.11.1993 and the other on 9.11.1993 - show Blood Sugar remained at 734 and 580 mgms per 100 cc, obviously very, very high than the normal and placing the patient at a very high risk. It is also an admitted position that no test for urine acetone was done to ascertain Ketoacidosis, which was the case with the patient in question. As per medical literature on record Ketoacidosis can be reversed only with insulin. We have gone through the hospital record of Doctors and nurses. There is not a word about administering insulin at any time between 7 p.m. of 8.11.1993 and 8 a.m. on 9.11.1993, when it was administered for the first time. No case has been made out even before us that insulin was not required. What is obvious is that effort of the staff/doctors during the night of 8-9th November, 1993 was to control the Blood Pressure, completely ignoring the control of Diabetes Mellitus by administering insulin. It is only on 9th November, 1993 in the morning that massive dose of insulin is directed to be administered. State Commission has gone into the act of negligence at length and found the appellant was negligent with which we agree in toto. An attempt to skirt the main issue of negligence is being made under an unacceptable and transparently flimsy ground that the appellant only provide infrastructure. Their case is that it was Doctor Tewari who should have been made a party to give account for his conduct. We fail to appreciate this queer logic. Bombay Hospital is neither an "inn" nor a Hotel which provide boarding/lodging facilities. It is a Hospital. It has ICU. It has Registrars, Assisting Doctors, nursing staff and charges hefty fees for this. Record makes it clear that the patient was shifted to Bombay Hospital in a van provided by appellant Hospital accompanied by a Doctor who is in the employ of the appellant. It is Hospital who selects the consultant. There is no evidence or proof that the complainant asked for a specific consultant. Admitted position is the patient came to the Hospital at about 7 p.m. Dr. Tewari came at about 10.30 a.m. for few minutes. It was not the complainant who called him, it was the Hospital. Doctor came leisurely at 10.30 p.m. If this is the "emergency-response" mechanism of the appellant Hospital then "God help the patients". In fact, we

find Hospital negligent on this account as well that a person in serious condition was left unattended without the services of a specialist for over three hours, perhaps critical in the life of the patient - this all was happening when the patient has come to the appellant's Hospital for better management. After seeing the patient for few minutes, Dr. Tewari is neither heard nor seen any more and yet the appellant has the audacity to attempt to pass on the buck to Dr. Tewari who is a creation of the appellant Hospital. Nomenclatures like consultant and the like would be very deceptive. No existing arrangement between the Hospital and the so-called Honorary consultant is on record. State Commission in our view has rightly rejected this contention of the appellant that Dr. Tewari was a necessary or proper party. Appellant cannot escape from his responsibility as the epicentre or a hub around which everything also revolves. In our view the proper party is the appellant who provided the infrastructure, amenities, staff doctors, who are in their employment. It is they who attended or otherwise for 15 hours. Negligence is of Hospital and not of this consultant who saw the patient for a few minutes. There is nothing on record to show that when Blood Sugar Test reports showed recovery of 734 and 580, it was reported to any consultant/Senior Doctor leave aside Dr. Tewari, to seek his advice in view of the alarming situation. It is Hospital who is fairly and squarely responsible for all what happens inside his Hospital including the acts of omission and commission of its employees. In our view, Dr. Tewari is being dragged unnecessarily to cover its own failures and acts of sustained negligence by not giving proper treatment. Medical negligence is when a Doctor does not do what a Doctor of average knowledge experience and capability would do or he does what large body of Doctors would not do. It is not the case of the appellant that Insulin should not have been given. Medical literature and the affidavit of Dr. Rane, a D.M. Cardiology is quite clear that insulin should have been given to control diabetes. This was not done. One does not require a better evidence for establishing medical negligence. In passing we would also like to observe that despite opportunities being given, affidavit by way of evidence was not filed by the appellant/opposite party either on its own behalf or of an Expert in their support. Witnesses were not cross examined despite opportunity being given to the appellant. It would be too late in the day to complain at this stage on this stage on this point.

5. WE see no merit in this appeal, which is totally devoid of merits and is hereby dismissed with costs of Rs. 10,000/- to be payable by the appellant to the complainant within six weeks of the order. Appeal dismissed.