(2002) 09 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

C.A.PHILOMINA — APPELLANT

Vs

VIJAYA KUMAR KODALI — RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Citation : 2003 3 CPJ 403 : 2003 3 CPR 485

Hon'ble Judges : P.Ramakrishnam Raju , C.P.Suresh J.

Final Decision : Complaint dismissed

Judgement

1. THE facts of the case in brief are that the complainant''s husband late K.J. Thomas, hereinafter called ''the deceased'', aged about 32 years was working as fitter in a private industry drawing a salary of Rs. 1,735/- per month. While so complaining fever he approached the opposite party nursing home for treatment on 23.8.1995 where he was given two injections and prescribed some medicines on collecting necessary charges. After using the medicine prescribed by the doctor the deceased got severe pain in the right leg. He approached the doctor again on 24.8.1995 and took treatment till 25.8.1995 as in-patient. However he was taken to Nizam''s Institute of Medical Sciences (NIMS) in a critical condition where he died on the same day at 11.00 p.m. after undergoing operation. All this happened due to the wrong treatment given by the doctor. THE discharge certificate issued by NIMS shows the cause of death as cardiac arrest due to gas gangrene. Hence she claims a compensation of Rs. 7 lakhs.

2. IN the written version filed by the opposite party it is stated that the deceased had undergone treatment for recurrent fever with chills and rigors at a clinic in Shapoornagar near Jeedimetla before he approached the opposite party. He was admitted as an in-patient and was given two intramuscular injections one for body pains and fever DICLOFENAC, and another for vomitings REGLAN as symptomatic treatment with a view to arrest the temperature, vomiting and body pains for immediate relief to the patient. Since the patient was vomiting he was given two bottles of I.V. fluid drip to arrest dehydration. On the same day at about 2.00 p.m. as the patient was feeling better he sought for discharge against

medical advise. He was advised to undergo Widal test, complete blood picture with Erythrocyte Sedimentation Rate test, complete urine examination and smear for malarial parasite. He was prescribed Malaquin and Ifimol tablets, meanwhile to control fever with chills. On 24.8.1995 the deceased came back to the nursing home around 1.30 p.m. complaining severe pain in the right buttock and thigh and that he was not able to walk freely. He was having temperature of 100 0F with diffuse swelling in right buttock and lateral part of the thigh. The opposite party diagnosed the case of the diseased on 24.8.1995 as ''cellulitis of the thigh''. He was treated with antibiotics like penlox, garamycin injections and pain killers like diclofenac, fortwin and I.V. fluids. By next morning i.e., on 25.8.1995 the opposite party doctor noticed increased swelling. At about 7.00 a.m. the patient vomitted. The opposite party advised I.V. fluids. Swelling increased by 9.30. Hence it was decided that further treatment was possible only after special investigation. Accordingly he referred the patient to NIMS and accordingly discharged him at 9.30 a.m. where he was admitted for complaint of ''cellulitis''. The deceased was treated by the opposite party as well as by the doctors at Shapoornagar and also at NIMS where he died. The treatment given by the opposite party cannot cause gas gangrene which is cause of death. The opposite party has given appropriate treatment and there is no negligence on his part. The complainant was examined as P.W. 1 and marked Exs. A-1 to A-17 while the opposite party examined himself as R.W. 1 and marked Exs. B-1 to B-11.

The point that arises for consideration is, whether there is any negligence on the part of the opposite party doctor ? The case of the complainant is that her husband who was hale and healthy, aged 32 years working as a fitter, complained of slight fever and approached the opposite party doctor for treatment who gave two injections and prescribed some medicines as a result of which he got severe pain in the right leg and approached the opposite party on 24.8.1995 and took treatment as in-patient. By 25.8.1995 morning his condition became critical and the opposite party doctor discharged him with an advise to go to NIMS. He was operated and died due to cardiac arrest due to gas gangrene. According to the complainant the opposite party doctor has failed to diagnose the disease correctly and treat him properly.

3. IN the complaint it is stated that the deceased got slight fever and approached the opposite party. Opposite party also admits that the deceased came to his nursing home at about 7.30 a.m. on 28.8.1995. He produced Ex. B-1 the case sheet of the deceased which shows that the patient complained of recurrent fever with chills, rigors 15 days. Severe body pain with headache one week, pain lateral part of right upper thigh since two days. Vomiting since two hours. The history of taking treatment at Shapoornagar for past two weeks also noted. This shows that the patient was suffering from recurrent fever, chills and rigors since 15 days. The complainant also admits that her husband went to the opposite party nursing home at 7.15 a.m. on 23.8.1995. The learned Counsel for the opposite party submits that the time at which the deceased approached the nursing home shows that he was not suffering from fever on 23.8.1995 for the

first day or for slight fever. The prescription Ex. A-1 filed by the complainant shows numerous tests like Widal test. Complete urine examination, complete blood picture, Erithrocite sedimentation rate etc., and the drugs prescribed give us a clue that it is not a slight fever as alleged in the complaint. Be that as it may.

4. THE opposite party made a preliminary diagnose at 7.50 a.m. on the first day i.e., 23.8.1995 as Pyrexia of unknown origin. THE complainant did not state the same of the two injections that were administered to the deceased whether they are intramuscular or intravenous or the site where they are administered. But the opposite party in his counter stated that he administered two injections i.e., ''Diclofenac'' for body pains and fever, and ''Reglan'' for vomitings. THE complainant did not dispute in her evidence about giving of these two injections, but she merely stated that her husband was given two injections and prescribed some medicines and after consuming the prescribed medicines he got severe pain in the left leg and again approached the opposite party on 24.8.1995 and took treatment till 25.8.1995 and his condition became very serious and the opposite party has not taken proper care but diagnosed the disease wrongly. THErefore, from the complaint or from the evidence of the complainant, it is not clear whether the two injections given by the doctor have resulted in the formation of gas gangrene or the tablets prescribed caused the gangrene. As already stated she merely stated that after consuming the prescribed medicines her husband got severe pain in the right leg and hence approached the opposite party on 24.8.1995, again the next day. We have to see what are the drugs prescribed by the opposite party and their effect. Ex. A-1 prescription issued by the opposite party shows the history as ''Pyrexia'', headache, chills and vomitings for which Malaquin and Ifimol tablets were prescribed. Ocid for acidity and Relipen for abdominal pain were also prescribed. Tests like Widal, complete urine examination and CBP and ESR were also prescribed on that day. Ex. A-2 shows that result of CBP and ESR dated 24.8.1995 issued by Sandeep Diagnostic Centre. Urine analysis and Widal results were also shown to the doctor which do not show any abnormality. The complainant has not stated which of the drugs prescribed by the doctor have resulted in severe condition of the patient. Ex. B-10 the admission record of NIMS where the patient was admitted on 25.8.1995 at 12.50 p.m. shows the diagnosis as gas gangrene. There also injection diclofenac and I.V. fluids etc., as prescribed by the opposite party on 24.8.1995 were again prescribed. So the treatment given by the doctor is continued. The learned Counsel for the opposite party submits that the deceased must have taken treatment at Shapoornagar as noted by the duty doctor in Ex. B-1 since the address of the patient was given as Shapoornagar and he approached the opposite party later. Of course this is not the case of the complainant. Ex. B-10 which shows the address of the deceased as L.B. Nagar and not Shapoornagar. So also Exs. A-11 and A-12. Mere wrong address as noted in Ex. B-1 without more may not be sufficient to hold that Ex. B-1 is got up. Be that as it may. But the learned Counsel for the complainant submits that the case sheet Ex. B-1 maintained by the first opposite party is got up. A reading of the complaint

shows that the deceased was treated as out-patient on 23.8.1995. But the opposite party states that he was admitted as in-patient and remained there till 2.00 p.m. at which time he asked for a discharge as he was feeling better. But he again came on 24.8.1995 with severe pain in the right buttock, not able to walk, temperature 100 0F, diffuse swelling of right buttock and lateral thigh. The diagnosis is ''cellulitis'' thigh. Pain reduced little by 6.00 p.m. At 11.00 p.m. the noting shows that the patient was not getting sleep. Pain increasing. At 5.00 a.m. on 25.8.1995 pain severe, swelling increasing. At 9.30 decision was taken to shift the patient to NIMS.

5. THE entries in Ex. B-2 case sheet maintained by the doctor from 24.8.1995 show that the patient was given Pentox 500 mg., injection garamycin and diclofenac as well as 5 per cent dextrose I.V. Again advised Fortwin, Phenorgan at 11.00 p.m. as a pain killer. Again at 5.00 a.m. on the next morning Mikacin 500 mg., Cristalin, Penicillin, Metrogyl I.V. fluids etc., were given. Injection Diclofenac as well as I.V. fluids were advised. Though Exs. B-1 and B-2 are filed on 16.12.1996 along with counter it is not denied in the evidence of the complainant that these drugs were not administered. THErefore, the mere allegation that the case sheet was got up in our view does not carry conviction.

6. EX. B-11 post-mortem certificate shows that there are 12 surgical wounds. They are in the region of right knee, right thigh and buttock etc. The cause of death is mentioned as not due to any injections or other drugs but due to gas gangrene. The fact that there are 12 surgical wounds in the region of right knee, thigh and buttock shows that location of gas gangrene has noting to do with the region where injections were given. Further EX. B-11 does not disclose any abscess at the site where injection was given. Dr. K. Rajagopal Reddy, Professor and Head of the Department of Forensic Medicine, Gandhi Medical College answered some questions under EX. B-7 in connection with the criminal complaint filed by the father of the complainant against the opposite party, wherein he answered that in his experience he did not come across a case of death due to gas gangrene followed by injection. He further stated that he does not think that the doctor was negligent in treating the patient. He also filed an affidavit to the same effect. But the complainant failed to cross-examine him. The affidavit evidence given by Dr. Rajagopal Reddy remains uncontroverted. His evidence belies the contention of the complainant. The learned Counsel for the opposite parties relied on the next book of ''Microbiology'' fifth edition page 237 wherein Clostridium Welchii is discussed. It is observed "Cl. Welchii is a normal inhabitant of the large intestines of man and animals. It is found in faeces and contaminates the skin of the perineum, buttocks and thighs. The spores are commonly found in soil, dust and air".

About gas gangrene it is observed "Cl. Welchii Type A is the predominant agent causing gas gangrene. It may occur as the sole aetiological agent, but is more commonly seen in association with other clostridia as well as non-clostridial anaerobes and even aerobes. All clostridial wound infections do not result in gas

gangrene. More commonly, they lead only to ''wound contamination'', or anaerobic cellulitis. It is only when muscle tissues are invaded that gas gangrene (anaerobic myosities) results"... Endogenous gas gangrene of intra-abdominal origin; "Gas gangrene of the abdominal wall has been reported as an infrequent complication of abdominal surgery. The infection is endogenous, the organism being derived from the gut and contaminating the abdominal wall during surgery. Gas gangrene of the thigh as a result of infection tracking from the abdomen has also been reported".

7. HE also relied on Mandell, Dauglas and Bennett''s Principles and Practice of Infectious Diseases fifth edition - Chapter 236 Gas Gangrene and other Clostridium Associated Diseases page 2553 where it is observed "Unlike typical cases of gas gangrene, which follow trauma, in most of those caused by C. septicum, no obvious external portal of entry can be found. In this more recently recognized syndrome, often referred to as non-traumatic or spontaneous gas gangrene, the presumed source is the colon..." "Ultimately, gas gangrene is surgical diagnosis made when involved muscle is visualized. Affected muscle has a pale or darkened ''cooked'' appearance and fails to contract when incised or electrically stimulated : the cut surface does not bleed. The extent of myonecrosis is often greater than the skin changes indicate". In "E medicine" Journal, August 16, 2001, Volume 2, Number 8, it is observed as follows : "Background : Gas gangrene is an infectious disease emergency. Rapid onset of myonecrosis, case production, and sepsis are the hallmarks of this disease.... Spontaneous gas gangrene is caused by hematogenous spread of toxin producing bacteria (often in-patients who are immunocompromised or those with diabetes)... Mortality/Morbidity : Mortality from traumatic gas gangrene is greater than 25 per cent. Mortality from nontraumatic gas gangrene caused by septicum ranges from 67-100 per cent. Risk factors : Patients who develop nontraumatic gas gangrene usually are immunocom-promised. Gas gangrene is highly associated with hematologic and gastrointestinal malignancies. Cl. Welchii alone may be the reason or it may be associated with other species or with other gram positive or gram negative to cause gas gangrene. It should be co-opine to ascertain the reason such as CBF test etc., tests conducted showed no abnormality."

8. IN view of these authorities it is clear that gas gangrene cannot form by mere administering injections, more so in the absence of proof that any particular injection which has the tendency to develop gas gangrene was administered. It is not the case of the complainant as we scan through the complaint that due to administering injections the problem arose and gas gangrene resulted. Though it is stated that after taking the drugs as prescribed by the opposite party doctor her husband developed complications, the super speciality hospital like NIMS where the deceased was admitted could not attribute any defect in the treatment given by the opposite party. The post-mortem certificate merely says that the death is due to gas gangrene with its complications. Significantly it does not say that it is due to any medicine. The reasons for formation of gas gangrene are

galore as seen from the authorities cited above. Dr. Rajagopal Reddy, Professor and Head of the Department of Medicine, Gandhi Medical College who is an independent witness in his affidavit states that the disease like gas gangrene cannot occur by giving any injections but it may occur due to major wound in the body or major surgery and there is no negligence in the treatment given by the opposite party doctor. His affidavit together with the above authorities clearly go to show that gas gangrene cannot result by administering injections or medicines. The opposite party was diligent in treating the patient. The case sheet Exs. B-1 and B-2 show the meticulous care the opposite party has taken in treating the patient and prescribing medicines. But unfortunately the deceased developed gas gangrene and died due to its complications as seen from the post-mortem report but not due to the defect of administering injections or medicines. As already seen NIMS has diagnosed the problem as ''cellulitis'' which means an acute, diffuse, spreading, edematous, suppurative inflammation of the deep specutaneous tissues and some times muscle which may be associated with abscess formation caused by infected operative or traumatic wound, burn or other cutaneous lesion by various bacteria. It is seen from the discussion as narrated above that immunosuppression metastatic sites bacteria which travels and settles anywhere or indigenous i.e., originating within the body are some of the causes resulting in gas gangrene. Unfortunately the deceased had the bacteria from a source other than the medicine administered by the opposite party. NIMS has shown the cause of death as cardiac arrest due to gas gangrene after surgery. Therefore, the complainant in our view has not been able to establish that the death is the result of the negligent treatment of the patient in the hands of the opposite party or that there is any deficiency in service or that there is lack of proper care in diagnosing or treating the patient by him. In the result, the complaint fails and is accordingly dismissed. But in the circumstances without costs. Complaint dismissed.

