(2014) 10 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Chand Kishore Rajput — APPELLANT

Vs

Sood Stone Clinic (Hospital) and Ors. — RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : 2015 1 CPJ 101

Hon'ble Judges : S.M.Kantikar J.

Final Decision : Petition allowed

Judgement

1. CHAND Kishore Rajput, the complainant (in short here in referred as ''patient''), a teacher in a private School, underwent Lithotripsy (Crushing of the urinary stone) from M/s. Sood Stone Clinic -OP -1, on 28.5.1999. It was performed by Dr. Rajiv Sood, the OP -2. Prior to procedure, an ultrasound (USG) was performed on 27.5.1999, the report is Ex. PW 1/1, and the OPD slip of OP -1 is Ex. PW 1/4, RW 1/2. Till then he paid Rs. 8,000, the receipt is Ex. PW 1/5. The patient experienced swelling of entire body, pain and difficulty in passing Urine after Lithotripsy. Urine Examination was done, the report dated 30.5.1999 (Ex. PW 1/8) with Culture and Sensitivity Report have been placed on record. For the repetition of symptoms of abdominal pain, he enquired OP -2, who insulted the complainant, by some bad abusive words. On 31.5.1999, the patient went to J.N. Medical College, at Aligarh (in short, JNMC), and took the treatment (Ex. PW/11). There, he was diagnosed with bilateral renal calculus and urinary tract infection (UTI). The relevant laboratory test reports are Ex. PW -1/11, 1/12. Thereafter, on 1.6.1999, again, he visited OP -2 and Dr. Gahlot, who prescribed medicines. Again, on 4.6.1999, he consulted Dr. A.K. Bhardwaj at JNMC, Aligarh, who performed. USG (Ex. PW 1/13). On the same day, patient went to OP -2, along with those reports, but the OP -2 became furious, refused to give any treatment and denied about any deficiency in his treatment. Again, on 22.6.1999, the complainant underwent USG, KUB, X -ray, which showed existence of calculus, for which he consulted OP -2, who performed 2nd time lithotripsy on 24.6.1999, called the patient after one month, on 25.7.1999, and also advised him to do some exercise, like jumping. Third Lithotripsy procedure

was performed on 25.7.1999, during which complainant suffered severe pain and large quantity of blood came through urine. OP -2 did not explain about it satisfactorily. On 4.8.1999, the patient felt difficulty in passing urine i.e., dribbling, met OP -2 again. The OP -2 inserted Urinary Catheter, an unsuccessful attempt, causing injury to the urethra. Blood was oozing from the catheter. On 6.8.1999 and on 7.8.1999, 4th and 5th sitting, Lithotripsy was performed, by which, the stone was passed through urine on 8.8.1999, along with profuse bleeding. The urine culture report was performed on 23.8.1999 (Ex. PW 1/3). Finally, after 30.8.1999, the patient started passing urine intermittently with severe burning pain. Thereafter, on 6.9.1999 he went to AIIMS, New Delhi for further treatment. The doctor at AIIMS told him that the said disease was due to incomplete removal of stones. The doctors at AIIMS collectively, diagnosed him with, "injury to the soft bulbuls urethra and stricture". The OPD card of AIIMS is Annexure P -15, the reports are Annexures 17 -19. On 7.12.1999, he was operated at AIIMS through microscopy for the bulbous stricture urethra. The doctor said that there is no permanent treatment for the said disease and that he has to suffer life long and he needs regular catheterization. Due to this illness, the complainant could not have satisfactory matrimonial relationship. Therefore, the complainant filed a complaint before this Commission, against OP -1 and 2 for deficiency in service due to unprofessional and callous approach, who performed lithotripsy negligently, which was led to soft stricture of bulbous urethra. He suffered huge medical expenses and mental agony. Thus, prayed for compensation from the OP -1 and 2 to pay a sum of Rs. 46,00,000 along with 18% interest, per annum, from the date of filing the complaint. Defense:

The Opposite Party filed its written version and affidavit. OP -2 contended that he is a well qualified Super Specialist in Urology, having vast experience. The Lithotripsy is well recognized technique, having best results to treat the stones, anywhere in the urinary tract by passing electro hydraulic shock waves. The O.P. submitted that on 27.5.1999, the patient consulted Dr. Gahlot, Ex -Head of Department of Surgery and In -charge Urology of J.N.M.C., Alligarh, for pain in abdomen. After USG, he was advised to undergo Lithotripsy. Dr. Gahlot referred the patient to OP -2. The complainant had already undergone IVP (Intravenous Photography) in June 1998 as he was suffering from Urinary Tract Infection (Annex. 5). OP -2 performed Lithotripsy after roper investigations and taking informed consent, on 28.5.1999. Mild hematuria with colic pain to the patient is known as a natural consequence of Lithotripsy, but denied about the injury to soft bulbous urethra, due to said lithotripsy. O.P. produced the relevant pages 292 to 293, from a medical book CAMBELLS UROLOGY, (Annexure R -5). The total charges for Lithotripsy were Rs. 14,000, out of which, only Rs. 8,000 was paid by complainant/patient and thereafter trying to avoid to pay balance amount on the one pretext or the other. Usually, the cycles of Lithotripsy are at regular interval of 7 -10 days, but the patient was irregular, failed to report back, during regular fixed appointments. During the course of his treatment, the complainant consulted few other doctors at JNMC; therefore, it was the lapse on

the part of the complainant. The complainant was aware of contents of consent form, and about the minor complications like hematuria and pain. The patient had multiple stones; therefore the stones may or may not get broken in one sitting. He submitted that the ureteric stone was cleared, but the stones in left and right kidney were still persisting on 24.8.1999. There is no nexus between the Lithotripsy and occurrence of stricture bulbous urethra. The O.P. submitted that the sufferings and loss or injury was due to negligence of complainant only as, there was interference from other doctors whom the patient consulted, who were not experts in Lithotripsy.

Arguments and Findings:

2. WE have heard the Counsel for both the parties. Counsel for the complainant vehemently argued that there was negligence in conducting the Lithotripsy procedure due to which he suffered the injury to the Bulbous urethra and subsequently, the stricture. Hence, the O.P. is responsible for the negligence. The rival contentions advanced by the Counsel for the Opposite Party is that the O.P. is a qualified senior Urologist practicing for more than two decades. He has explained the inherent causes of renal stone formations and drew our attention towards the literature, the schematic diagram of Urinary Tract System, which are placed at Annexure R -1(a, b, c). We have perused the medical records, the Consent Form (Annexure R -2). The relevant and important portion from the Consent form is hereby reproduced as follows - "I am ready to get my/my patient''s Lithotripsy done. Following risks have been fully explained to me - -

- - Repeated sittings may be required for complete clearance.

- - Recurrence may occur after the treatment.

- - There may be colicy pain while fragments pass out.

- - Surgical interference may be required at any time after the procedure.

- - Haematuria occurs after treatment which may even require surgical interference for control.

- - Treatment failure may occur in the form of non -fragmentation or in the form of failure to pass fragments. In both the circumstances charges taken are non -refundable."

The follow -up advice given by OP -2, after Lithotripsy, clearly shows that the patient was kept on analgesic (pain killer) and anti -inflammatory drugs. The patient was called after 7 days, with fresh X -ray and USG report for the next sitting of Lithotripsy on 5.6.99. It was noted that there was a partial success after first sitting on 24.6.1999. The treatment sheets of 3rd sitting dated 25.7.1999 revealed that patient was suffering from Urinary Tract Infection (UTI), and he was not taking regular treatment and asked to obtain fresh culture reports for adequate treatment. The 4th sitting was on 6.8.1999 done by OP -2 and the stone did pass on 8.8.1999. The patient lastly visited the O.P. on

25.8.1999. Thereafter, whereabouts of the patient were not known. The patient approached AIIMS on 6.9.1999, where he was diagnosed as stricture of Soft Bulbous Urethra and was treated for that. We have perused the medical records of AIIMS, and noticed that various investigations were performed, and treated in the Department of Urology for Strictureplasty and end oscopic dilatation. Perusal of OPD card dated 6.9.1999 of AIIMS clearly mentioned about, "No history of Hematuria" which is contrary to the submission of patient that he was profusely bleeding since 8.8.1999. The Ex. PW 1/5 -OPD card of AIIMS dated 6.9.1999 is reproduced as under:

1. Micturation (Burning of urine).

2. Intermittent retention of urine.

3. No history of hematuria.

3. PAST history of Lithotripsy.

4. INCOMPLETE removal of stone. The symptoms of intermittent retention of urine will appear only by the stone in urethra and not by the stricture. The stricture urethra will cause either complete urinary retention or no retention. Hence, we do not believe the complainant''s averment that, he has not passed urine from 30.8.1999 to 6.9.1999.

We have perused the Ex. PW 1/18 and the noting of date 4.10.1999 are as following:

4.10.1999 - -Still shows retention of urine and multiple catheterisations done at AIIMS and outside AIIMs because that on 9.12.1999 endoscopic examination still shows that soft bulbulous urethra has still not matured and this is five months since petitioner left treatment of respondent No. 2 and as per the report of 1.3.2000 in Ex. PW -1/19, the petitioner was passing urine adequately.

Reasons:

4. We don''t find any co -relation between Lithotripsy of Ureteric stone and the stricture of bulbous Urethra which, the patient suffered. Both are totally different entities. The Lithotripsy needs minimum 3 -4 sittings to get crushed the stones completely. Also, as per medical texts, it is pertinent to note that, No catheterization is necessary for passing stones. The patient herein was regularly irregular in his treatment. He did not follow the instructions of OP -2, and did not visit timely. He tried to consult few other doctors, which he did not reveal to the OP -2, and thus the patient got confused about his health status. The argument on behalf of complainant is bereft of merit and it is not supported by any medical documents or evidence to prove that stricture of urethra was developed due to lithotripsy treatment. Even otherwise, the last but not least, the conduct of patient appears to be mala fide one. Out of total charges of Rs. 14,000, the patient had paid only Rs. 8,000 to the O.P. Hospital. It was under presumption that, the first one sitting of Lithotripsy itself, was enough and the entire stone

will be flushed out, on its own, through urine. But, the patient came back to OP -2 second time, after strict advice of doctors at JLNH. Hence, it is clear that, on one pretext or other, he was avoiding to pay Rs. 6,000 the fees due to OP -2.

5. According to Mosby''s Medical Dictionary, 8th edition. ((THELAW)) 2009, Elsevier:

the Negligence (in law) is the commission of an act that a prudent person would not have done or the omission of a duty that a prudent person would have fulfilled, resulting in injury or harm to another person. In particular, in a malpractice suit, a professional person is negligent if harm to a client results from such an act or such failure to act, but it must be proved that other prudent members of the same profession would ordinarily have acted differently under the same circumstances. Negligence may be misfeasance, malfeasance, or nonfeasance.

Elements of Medical Negligence have been discussed in several judgments. Thus, negligence is logically divisible into four elements - -Duty, Breach, Cause in fact/ Proximate cause, and Harm/Damage

An element required to prove negligence by the complainant is the Proximate Cause; the complainant/patient must prove that his injury is reasonably connected to the doctor''s action, through either the ''but for'' test or the ''substantial factor'' test.

The Proximate Cause relates to the scope of a doctor''s responsibility in a negligence case. A doctor in a negligence case is only responsible for those harms that, he could have foreseen through his or her actions. If a doctor has caused damages that are outside of the scope of the risks, then the patient will fail to prove that the doctor''s actions were the proximate cause of his injury.

In this case, firstly we do not find that there is any negligence or any shortcomings in the treatment given by OP -2 to the complainant. OP -2, performed Lithotripsy after informed consent. Even, the procedure of Lithotripsy is not a proximate cause of stricture of bulbous urethra which was diagnosed after 5 months, after the Lithotripsy. The patient visited number of hospitals and took treatment from number of doctors, which cannot be ignored.

5. JUST because a person suffers a bad outcome from medical treatment, does not mean that they have an automatic right to sue for compensation. A medical error is only considered "negligent" if the healthcare practitioner has failed to take "reasonable care". The law does not require a doctor to act "perfectly", but rather, the law requires that a doctor take "reasonable care" in treating and advising a patient. This is not a high or impossible standard to achieve. Bolam v. Friern Hospital Management Committee, [1957] ruled that - -

"It is expected of a professional person that he should show a fair, reasonable and competent degree of skill; it is not required that he should use the highest degree of skill.

On the basis of foregoing discussion, we are of considered view that, the OP -2 was a qualified Urologist and had acted reasonably; he succeeds the Bolam''s Test. His treatment and follow -up advice was correct. The complainant failed to prove medical negligence, hence the OPs are not liable for any medical negligence. Accordingly, we dismiss this complaint. However, parties have to bear their own costs.

