(2013) 07 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Chandrakant S. Kothari — APPELLANT

Vs

Dean, Sir Hurkirondas Norrotumdas Hospital And Research Centre and Dr. Nitul Parikh Hospital And Research Centre — RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : 2013 3 CPJ 681

Hon'ble Judges : B.C.Gupta J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 by the petitioner against the impugned order dated 29.02.2008 passed by the Maharashtra State Consumer Disputes Redressal Commission (for short ''the State Commission'') in FA No. 1042/2007, "Sir Hurkisondas Narrotumdas Hospital & Research Centre versus Chandrkant S. Kothari" vide which the order dated 26.06.2007 passed by District Consumer Disputes Redressal Forum, Mumbai in complaint No. SMF/MUM/98/2003 was set aside. The District Forum vide that order had allowed the complaint filed by the petitioner/complainant and ordered the respondents/OPs 1 & 2 to pay a sum of Rs. 5 lakh severally and jointly to the complainant within one month along with interest @9% p.a. till final payment with effect from 4.4.2003 and also pay a sum of Rs. 5,000/ - to the complainant for mental harassment and cost of the litigation. Briefly stated, the facts of the case are that Ms. Chandrakant Vora, who was daughter of present complainant was admitted in OP hospital on 10.04.2001 for the treatment and surgery of "Infertility Chocolate Cyst of the Ovary". She was operated upon by Dr. S.S. Sheth in the hospital on 11.4.2001. It has been stated that the patient was alright after the surgery, but she developed post -operative complications with effect from 12.04.2001. She had complaints of vomiting along with diarrhoa and breathlessness. She had patches and swelling on the body and darkness on face and legs. She was unable to pass urine. The complainants have alleged that on 12.04.2001, no doctor examined the patient from 11:00 AM to 5:30 PM and no medical treatment was given to

her during this period. It has been alleged that because of the negligence of the hospital and the doctors, the patient died because of septicamia on 20.04.2001. The complainant, father of the deceased, filed a consumer complaint before the District Forum which was allowed by the said fora on 26.06.2007 as stated in the preceding paragraph. The OPs filed an appeal against this order before the State Commission, which was allowed vide impugned order and the order of the District Forum was set aside and the complaint was dismissed. It is against this order that the present revision petition has been filed.

2. HEARD the learned counsel for the parties and examined the record. Learned counsel for the petitioner narrated the facts of the case and stated that the hospital has shown grave negligence by not attending to the patient from 11:00 AM to 5:30 PM on 12.04.2001. No doctor attended to the patient during this period, because of which the condition of the patient deteriorated and she developed septicaemia which is a highly infectious disease, resulting in blood poisoning. Learned counsel has drawn our attention to the synopsis attached with the revision petition in which it has been stated that as per medical literature, the probable causes for developing septicaemia could be as follows: - - i) Invasive Procedures or devices

ii) Indwelling urinary catheter

iii) Diverticutitis, perforated viscus

3. LEARNED counsel maintained that it was a case of sheer medical negligence at the post -operative stage which led to the death of the patient.

4. LEARNED counsel for the respondent, however, denied that the patient was not properly attended to by the hospital on 12.04.2001. She stated that the patient was properly attended and medications/injections were also given to her. She was examined by all senior doctors and even taken to the Intensive Care Unit (ICU). She stated that in cases of surgery, septicaemia may develop in the patients and it was wrong to state that this condition developed due to any negligence by the doctors or hospital. She further stated that if the attending doctors performed their duties as per the normal procedures, no medical negligence can be attributed to them. A perusal of the record of the case indicates that the impugned order has been passed by the State Commission after careful examining the relevant papers of the hospital. It has been observed by the State Commission that these case -papers had come from the custody of the complainant. The entries in the case -papers show that the opposite party examined patient at 7:00 AM on 12.04.2001 and oral medicines/injections were also administered. The patient was seen by Dr. Priya, Gynaecologist on 12.04.2001 and she had no complaints. Another injection was given for fever at 12:00 PM on 12.04.2001. The patient was seen by gynaecologist house surgeon at 5:30 PM on 12.04.2001 and at that time they noticed breathlessness and side shoulder pain. The case was also discussed with operating surgeon Dr. S.S. Sheth and the patient was also referred to other medical specialists. The patient

was sent to ICU where the treatment was monitored by Dr. Rajesh Sharma, MD (Medicine) who is a critical care specialist. The State Commission has observed that all possible care was taken by the Hospital to save the life of the deceased.

5. THE State Commission have also referred to Bolam test as stated in the case of "Bolam versus Friern Hospital Management Committee [, (1957) 2 AII.E.R. 118 McNair J.] The following are the important features in the said case: - - (i) A doctor is not negligent, if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled that particular art.... Putting it the other way round, doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view. At the same time, that does not mean that a medical man can obstinately and pig -headedly carry on with some old technique contrary to what is really substantially the whole of informed medical opinion.

(ii) When a doctor dealing with a sick man strongly believed that the only hope of cure was submission to a particular therapy, he could not be criticised if, believing the danger involved in the treatment to be minimal, did not stress them to the patient.

(iii) In order to recover damages for failure to give warning the plaintiff must show not only that the failure was negligent but also that if he had been warned he would not have consented to the treatment.

6. FURTHER the Hon''ble Supreme Court in the case of "Indian Medical Association versus V.P. Shantha" [: III (1995) CPJ 1 (SC) : 1995 (6) SCC 651] has observed as under: The approach of the Courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services.

From the entire factual matrix of the case, it becomes clear that there is no doubt that the patient developed post -operative complications in the Hospital which led to septicaemia resulting in her death after few days, but the charge of medical negligence on the part of Doctors or the hospital is not established on any account. The patient has been handled and treated by the concerned specialists and they did their best to save her life. In view of these facts, it is held that the State Commission have committed no illegality, irregularity or jurisdictional error in passing the impugned order. The said order is upheld and the present revision petition is dismissed with no order as to costs.

