
(2007) 05 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

D. Rama Rajyam (Dr.)

APPELLANT

Vs

P.K. Vasudeva Rao and Ors.

RESPONDENT

Date of Decision : 29-05-2007

Acts Referred:

Citation : 2007 2 CPR 399 : 2007 3 CPJ 295 : 2007 4 UC 290

Hon'ble Judges : J.

Final Decision : Appeal dismissed

Judgement

1. BOTH these appeals arise out of the same order of the State Commission of Andhra Pradesh which allowed the CD No. 19 of 1995 in part directing the first opposite party Dr. D. Rama Rajyam to pay a sum of Rs. 50,000 to the complainant with interest @ 12% per annum from 2.3.1995 till payment and the CD No. 52 of 1995 was allowed in part directing Dr. D. Rama Rajyam to pay Rs. 2.00 lakh (Rs.1.00 lakh to each complainant) with interest @ 12% per annum from 5.8.1995 till payment. Dr. Rama Rajyam was also directed to pay Rs. 3,000 as costs in each CD to the respective complainants. Complaint against the second opposite party Dr. Doddi Parasuram was dismissed.

2. AGGRIEVED by this order Dr. Rama Rajyam has filed FA No. 302 of 2002 for dismissing the complaint. FA No. 303 of 2002 was filed by Vasudeva Rao and others for enhancing the compensation given. As both these cases are inter connected and arise out of the same order of State Commission, we heard the matter together and propose to pass a common order. Case in brief:

3. IT is the say of the complainant that Dr. Rama Rajyam was working as a Medical Officer in a Primary Health Centre, Balijipeta and running a nursing home at Bobbili in the name of her husband Dr. Doddi Parasuram (second opposite party). Patient Vijayalakshmi is the wife of the complainant in CD No. 19/1995 and the mother of the minor children in CD No. 52 of 1995. Smt. Vijayalakshmi was suffering from fever and her husband took her to Dr. Rama Rajyam on 10.8.1994 for treatment at the nursing home at Bobbili. She was prescribed Diclozil and asked for blood report. As the fever did not subside the patient was

again taken to the nursing home on 13.8.1994 and later on 20.8.1994, on which date the patient complained of stomachache and Dr. Rama Rajyam advised removal of uterus as it may lead to cancer without conducting any investigation. She prescribed Infeon injection for improvement of Haemoglobin and the surgery was scheduled on 8.9.1994 but was postponed to 15.9.1994. Dr. Rama Rajyam took 3 1/2 hours for conducting the hysterectomy. In the evening the doctor requested to get blood and the complainant brought some persons for donating the blood, despite giving lot of blood there was no improvement in her condition and ultimately the patient expired at 6.10 a.m. on 18.9.1994.

4. THE complainant alleged that the surgery was totally unnecessary and it was intended to extract money. Investigations like blood picture, x -ray, ultrasonic scanning, his to -pathological examination etc., were not done and anesthetist was not present, even when her condition was critical, the doctor Rama Rajyam did not allow an expert to examine or treat her. Hence, the husband of the deceased filed CD No. 19 of 1995 claiming a sum of Rs. 6.00 lakh towards compensation, medical fees and other expenditure. Soon after, the minor children of the deceased filed CD No. 52 of 1995 claiming compensation of Rs. 6.00 lakh towards the loss of love and affection etc. The opposite parties in their reply submitted that the deceased was suffering from Chronic Erosin Cervix. Gynaecologist at Srikakulam - Dr. Nirmala was treating her for the same which is not amenable for medical treatment and she advised hysterectomy which was performed at Sri Krishna Nursing Home, Bobbili run by the opposite parties which had all the equipments and facilities for conducting the surgery. The operation was successful and there was rapid improvement for three days, thereafter the patient developed unexpected complications despite giving oral fluids. Ambulance was also kept ready but the complainant did not consent to shift the patient to King George Hospital, Visakhapatnam. Despite sincere treatment the patient died due to Cardiac Arrest. Submissions of the learned Counsel for Dr. Rama Rajyam:

5. LEARNED Counsel submitted that after two months of death of the patient the complainant issued notice claiming Rs. 1,50,000 as compensation which was increased subsequently to Rs. 6.00 lakh. Not a single pie was paid by the complainant as the patient was recommended by the Judicial Magistrate, First Class in whose Court the complainant was working as a staff member. The claim was boosted to suite the convenience of the Advocate to bring within the pecuniary jurisdiction of the State Commission. The State Commission did not take into consideration the documents filed by the appellant due to which its decision suffered from legal infirmity. The State Commission committed an error by drawing an adverse inference against the appellant for non -filing of the case sheet, though they supplied the xerox copies of the case sheet and other documents to the Advocate for the complainant and also filed the same before the Commission along with memo and the same were accepted. In the memo of objections filed by the complainant before the State Commission, the complainants have admitted that the opposite parties have served photocopies of the alleged case sheet and some other papers on 13.6.2002.

6. THE learned Counsel further submitted that the father of the complainant had already filed one petition OP No. 19 of 1995 on the file of the District Forum on the same cause of action claiming damages and the claim of the complainants in this case is not explained as to its competency or the propriety on the same cause of action by the defacto guardian. As such the claim of the complainants and their father independently cannot at all be maintained. Even otherwise, on the same cause of action, when two reliefs are available, for one relief only, proceedings are started and for the relief of other another proceedings is incompetent. In other words, the proceedings started by the alleged minor children of the deceased Vijayalakshmi are barred under the provisions of Order 2 Rule 2, C.P.C. and as such this petition is liable to be dismissed in limine. The allegations mentioned in OP 19 of 1995 by the father of the minor children are substantially at variance with the allegations mentioned in OP 52 of 1995 filed by the alleged minor children of the deceased Vijayalakshmi. This has not been discussed by the State Commission at all. This is nothing but an abuse of the process of law by the complainants. The learned Counsel relied upon the judgment in II (2003) CPJ 62 to 66 - paras 15 and 16, Vinita Ashok v. Laxmi Hospital wherein it was held that: On the first allegation of negligence, it is argued by the complainant that certain tests were a sine qua non before surgery done on him. We have two problems in accepting the contention. No expert opinion or medical literature has been produced before us in support of this contention especially when this contention has been rebutted by the evidence of the opposite parties that pre -operative tests were duly conducted on the complainant. It is submitted that there is no thumb rule as to what tests ought to be conducted in every situation and the same is left to the clinical assessment of the doctors. On the medical record produced by opposite party Nos. 1 and 2, we see certain tests were carried out in the path -lab and the material is on record, hence, it cannot be disputed that certain tests were carried out before first surgery. Whether those tests brought out by the complainant in his rejoinder are a must are not bore out by any material on the subject, hence, we see no merit in this argument of the complainant.

Submissions of the learned Counsel for the opposite parties/complainant:

7. THE so -called case sheets filed by the doctor just to fill up the lacuna in records are not signed and appear to have been written on the same day. These documents e.g., case sheet, blood report, etc., are not supported by any affidavit. Complainants have filed detailed objections to these case sheets wherein they have stated that this document raises suspicion because the photocopy of the pathological report does not mention the name of the laboratory. They have stated as follows: 1. Three pathological reports dated 10.8.1994, 25.8.1994 and 14.9.1994 respectively without name of any laboratory or the name of the person issuing the reports.

2. Photocopy of extract of log book without disclosing the name of concerned authority, who has the log book in its custody.

3. Photocopy of two petrol bills issued by namely M/s. Arisetty Gunnayya Gupta, Salur dated 17.9.1994 and M/s. Bobbili Transports Private Limited, dated 18.9.1994.

They have also placed on record their objections for filing such documents before the State Commission at a belated stage, hence, they are not to be taken as part of the record.

8. LEARNED Counsel submitted that the State Commission has taken adverse inference for not producing the medical records. Further, though Dr. Rama Rajyam has claimed that Dr. Nirmala has advised hysterectomy, no record has been produced in support of this statement. Complainant's wife went walking to the Nursing Home and within three days of hysterectomy she died. Dr. Rama Rajyam claimed that an unexpected complication arose due to which the death took place. What is that complication is not disclosed. Learned Counsel submitted that this is a clear case of res ipsa loquitur. He quoted the judgment of the Apex Court in the case of Smt Savita Garg v. Director, National Heart Institute .

9. A bare perusal of the case sheet would show that the same is written at a stretch just to fill up the lacuna in the records, it is submitted by Dr. Rama Rajyam that the complainant was recommended by the Judicial First Class Magistrate, Bobilli, but no evidence has been produced in support of this claim. Findings:

1. The case sheets were not given to the complainant by Dr. Rama Rajyam despite several requests. They were only filed during the course of arguments which motivated the State Commission to take adverse note of their conduct. A perusal of the case sheets clearly gives an impression that these records were written at one stretch, long after the events have occurred and not as and when the events took place. They are written on plain sheets of paper and the letterhead of the hospital is conspicuously absent. There is no signature of the doctor or of the nurse on anyone of the sheets. These case sheets are not supported by any affidavit of the doctor, hence the case sheets are not believable.

Hysterectomy is a major operation which has to be performed only after the need is established. It is clear that in this case it was an elective surgery and not an emergency surgery. No record has been filed before the State Commission or before us to prove the urgency for performing hysterectomy.

2. The learned Counsel for the doctor quoted the judgments of the Apex Court in Vinita Ashok v. Laxmi Hospital. In this, it is mentioned that "on the basis of the medical record produced by opposite party Nos. 1 and 2, we see certain tests were carried out in the path -lab and the material is on record, hence, it cannot be disputed that certain tests were carried out before first surgery". This judgment is distinguishable from the case in hand. There is no proof that the tests mentioned supra were carried out in a pathological laboratory. There is no name, address, telephone number of the pathological laboratory, no name of the pathologist and no mention of his degree/diploma. Signature is also not legible.

The alleged test reports are written on plain papers.

The allegation of the complainant is that investigations like blood picture, x-ray, ultrasonic scanning, his to -pathological examination etc. have not been conducted, has not been controverted effectively by the doctor. Records indicate that only haemoglobin test and blood/urine test were conducted. Before performing the operation spare matching blood was not kept ready.

There are four records on white sheets of paper. The same are reproduced below:

Smt. Vijayalakshmi - F - Age 35 yrs dated 10.8.1994

Blood - Hb 8 gm

Blood Group & Rh tying "B" +ve

Signed

Smt. Vijayalakshmi - F - Age 35 yrs dated 20.8.1994 Blood Hb 12 gm

Signed.

Smt. Vijayalakshmi - F - Age 35 - 25.8.1994

Blood Hb 12 gm

Urine alb NIL

Sugar NIL

Signed

Smt. Vijayalakshmi - F - Age 35 yrs - dated 14.9.1994

Blood Hb 12 gm

Signed

In the above, the so called, test records of the doctor who recommended test, name of the pathological laboratory, name of the pathologist who conducted the tests are missing. It is not possible to accept this as a "piece of evidence in support of the contention of the doctor that pre-operative tests were recommended and were conducted.

3. Records of the case indicates the permission letter granted by District Medical and Health Officer, Vizianagaram dated 8.9.1994 which reads as follows:

Permission is hereby accorded for conducting Hysterectomy Operation on P. Vijayalakshmi wife of P. Vasudevarao at Sri Krishna Nursing Home, Bobbili in view of the recommendation made by the Judicial First Class Magistrate, Bobbili. Permission is accorded after due inspection of operation theatre facilities at Sri Krishna Nursing Home, Bobbili. This letter was given on the basis of the representation made by Dr. D. Rama Rajayam on 5.9.1994.

As this is a permission letter given as per the representation of Dr. Rama Rajayam and the letter given by JMFC is conspicuously missing in the records. We cannot accept the contention that there was a recommendation of the JMFC.

Doctor tried to make a case submitting that no fees was charged because this case was referred by the Judicial Magistrate, First Class as the complainant (husband of the deceased) was working in his office. Admittedly, the surgery was performed at a private nursing home owned by the husband of the doctor, which was utilised by Dr. Rama Rajyam from time to time to supplement her income. Hence, we cannot believe her contention that she has not collected any fee before performing this major surgery.

The Apex Court in the case of Indian Medical Association v. V.P. Shanta while defining the term service has held as follows:

The service rendered free of charge to patients by doctors/hospitals whether non-Government or Government, who render free service to poor patients but charge fees for services rendered to other patients would, even though it is free, not be excluded from definition of service in Section 2(1)(o). The Act seeks to protect the interest of consumers as a class. To hold otherwise would mean that the protection of the Act would be available to only those who can afford to pay and such protection would be denied to those who cannot so afford, though they are the people who need the protection more. It is difficult to conceive that the Legislature intended to achieve such result.

This judgment is squarely applicable to this case.

4. Assuming for a moment we believe that the patient was healthy till the night of 16th September, 1994 and complained of chest pain at 8.00 a.m. with increased rate of respiration and pain in lower limbs etc., we are baffled why the doctors did not get any doctor from the town to assist her especially a cardiologist. On the other hand, she has written in the so called case sheets that she recommended shifting of the patient to Vizag as she suspected Pulmonary Embolism. Vishakhapatnam is 90 kms. away from Bobbili and the patient would have certainly died on way to Vishakhapatnam. She has not stated that she was willing to take the patient to Vishakhapatnam in an ambulance along with the life saving drugs and other life saving equipments. It appears to be purely an after - thought.

It is the contention of Dr. Rama Rajyam that hysterectomy had been performed after clinical assessment by a Gynaecologist. There is no letter of Gynaecologist Dr. Nirmala who has stated to have recommended hysterectomy. It is important to note that an MBBS doctor decided to perform this elective major surgery without taking the assistance of an anesthetist or even another doctor at any stage even at a critical stage till the death of the patient.

5. The ratio of the judgment of the Apex Court in *Smi. Savita Garg v. Director, National Heart Institute* (supra), is applicable to the case under consideration:

Once a claim petition is filed and the complainant has successfully discharged the initial burden that the hospital/clinic/doctor was negligent, and that as a result of such negligence the patient died, then in that case the burden lies on the hospital and the doctor concerned who treated the patient to show that there was no negligence involved in the treatment.

In this case, the complainant has successfully discharged the initial burden that the doctor was negligent and as a result of the said negligence the patient died but the doctor concerned has not discharged the burden, to prove that there was no negligence in her treatment.

Hence, we do not find any cogent reason to interfere with the well reasoned order of the State Commission mentioned supra. Accordingly, we dismiss the first Appeal Nos. 302 and 303 of 2002 filed by Dr. Rama Rajyam.

FA No. 44 of 2003

10. SHRI P.K. Vasudeva Rao, husband of the deceased has also filed this appeal for enhancement of the compensation. The learned Counsel for Dr. Rama Rajyam contended that two different complaints were filed before the State Commission, one by the husband of the deceased and another by the children of the deceased, the second one through their guardian. As there is no conflict of interests between the two parties the second complaint is not maintainable, he argued. We do not find any merit in this argument because children of the deceased are also eligible for compensation as they are minors and as they were staying with their guardian and hence they have filed a separate complaint and State Commission has rightly awarded compensation to them also. Learned Counsel for the appellant has not made out any case before us to hold that Dr. D. Parasuram husband of Dr. Ram Rajyam has also been negligent, hence, we are not in a position to agree with the appellant that the responsibility has to be fastened on him also.

11. CONSIDERING the facts and circumstances of the case we find that the compensation awarded by the State Commission is just and reasonable. Accordingly, this appeal is also dismissed. There shall be no order as to costs.