(2014) 12 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

DALBIR SINGH — APPELLANT

Vs

Lala Harbhagwan Memorial And Prem Hospital Pvt. Ltd. — RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : 2015 2 CPJ 465 : 2015 6 ALD 44

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

Judgement

1. THIS common order will decide the two Appeals No. FA 200 of 2010 and FA 223 of 2010 filed against the order of State Commission, Haryana Panchakula in the Complaint No. 56/1996. For the convenience the parties referred herein as in original complaint. The facts are taken from FA The complainant, Mr. Dalbir Singh''s father Shri Yudhister Shastri, since deceased (herein referred as "Patient") on 5.8.1995, underwent operation of TURP (Trans Urethral Resection of Prostate), it was performed by surgeon, Dr. Pankaj Mutneja, at Lala Harbhagwan Memorial & Dr. Prem Hospital Pvt. Ltd. the OP -1 at Panipat. After operation, the patient felt some discomfort, and Dr. Pankaj assured that everything would be alright, within two days, but there was no relief. On 7.8.1995, the OP took the patient to the operation theatre, inserted a tube and removed the accumulated urine. Since, there was no relief, the OP, Dr. Pankaj, made 3 -4 holes in the body for removal of the accumulated urine which caused bleeding and further deteriorated the patient''s condition. Therefore, the patient was finally referred to Jaipur Golden Hospital, New Delhi (hereinafter referred as ''JGH''), OP -2. On 17.8.1995, as the condition of patient was very critical due to negligent treatment at OP 1. The doctors of JGH assured that, the bleeding will stop, but during transfusion of blood, the deceased died on 29.8.1995. Hence, the complainant, Mr. Dalbir Singh alleged that, his father was hale and hearty, and died due to negligence of OP -1. Also the OP was not a qualified urologist, not having necessary machine or equipment. Hence, the complainant filed a complaint before the State Commission and prayed for compensation of Rs. 20,00,000/ - from the OP -1.

2. AFTER considering the evidence and medical record, the State Commission allowed the complaint and ordered the OPs to pay Rs. 3 lakhs as compensation and Rs. 20,000/ - as litigation expenses. Aggrieved by that order of State Commission, both the parties filed cross appeals before this Commission. First appeal No. 200 of 2010 was filed by the complainant for enhancement of compensation while FA No. 223 of 2010 was filed by the OP 1 for quashing of the order passed by the State Commission.

3. WE have heard the counsel for the parties. Learned counsel for the OP -1 was present along with the doctor Dr. Pankaj Mutenja. He vehemently argued that there was no expert evidence, as referred in Jacob Mathew''s Case. There is no negligence on the part of the OP 1. He has relied upon the medical record and the relevant medical texts on the subject. The Counsel produced a copy of certificate issued by Department of Surgery, PGIMS Rohatak, the PG Curriculum for MS General Surgery, and Syllabus of AIIMS. The OP -1 doctor further submitted that, as patient was complaining of fullness in the lower Abdomen, it was suspected a possibility of extravasations of urine with prostatic capsular injury. Therefore, proper investigations, like X -ray abdomen, a contrast Cysto - gram, etc. showed well -formed Urinary Bladder and empty prostatic fossa. There was no spillage of dye in the abdominal cavity or outside prostatic fossa was seen radiologically. On 9.8.1995, a Retro Public drain was put and some fluid came out which was not fecal smelling. Patient felt better on 9.8.1995 & was allowed oral feeds. He was hemodynamically stable and afebrile . Drain inserted was working. However, on 10.8.1995, patient had jaundice, the Physician Consultation was done. After Lab and USG (Ultrasound) tests revealed extra Peritoneal fluid collection, multiple drains were put on 16.8.1995. Patient recovered and was stable and was accepting/taking oral feeds. The facilities in Panipat were limited for antibiotic therapy and for Fresh Blood Transfusion. Blood was brought from Delhi. The extravasations of irrigating fluid in peri -prostatic area is common during TURP and is rarely recognized nor is it clinically significant. It was managed by cauterization and if clinically significant, then retro pubic drain was put. Thereafter, the patient was finally referred to Jaipur Golden Hospital, New Delhi for treatment of Septicemia. The OP produced several medical research articles, the extract from the text book Bailey & Love''s "Short Practice of Surgery".

4. THE rival argument advanced by the learned Counsel/Amicus Curie for the Complainant that, it was negligence as the doctor was not a qualified urologist, who performed the surgery without any experience and expertise. The counsel relied upon the judgment of this Commission in the case of V.K. Mehta (Col.) and Mehta Urology and Surgical Centre v. Vimla Devi, Revision Petition No. 3077 of 2011 decided on 17.12.2013. We have perused the medical literature on the subject, the qualification and experience certificates of Dr. Pankaj Mutenja. It was an admitted fact that, OP -1 is a General Surgeon and not a qualified Urologist. The certificate issued by Sr. Professor and Head of Surgery Deptt., PGIMS, Rohatak which is reproduced as below :

"This is to certify that as per record Dr. Pankaj Mutneja has worked as P. G. student from 1987 to 1989 & Sr. resident from 1989 to 1991 in the department of Surgery. All types of Urological work like operation of kidney, ureter, urinary bladder, prostate urethra, etc. were performed in the deptt. Of general Surgery till separate deptt. Of Urology was started in 1992 at this institute."

Thus, we are of considered view that Dr. Pankaj had sufficient experience in all types of surgeries, in urology. He has started practice with special interest in urology since 1992. He is also a Member of Urological Society of India. The Appellant/doctor submitted that, Urology is a super specialization subject during the postgraduate studies and after completing M.S., the OP -1 had independently operated endo -urological procedures, under the Head of Department and also had expertise with the management of complications and procedures in Urology. We have perused OP -1 Doctor''s credentials, degree, training certificate, accreditation, and membership in a professional organization. No doubt, the TURP surgery is a domain of Urologist, but in late 1990s, the urology field was at developmental stage, most of the Surgeons were practicing Urology after training; qualified super specialists MCh Urology were not available. Even the Urological Societies were headed by experienced surgeons. Dr. Mutneja is engaged in the practice of urology since 1992, he had performed several uro - genital surgeries and had expertise and experience.

5. ON the other hand, the counsel for complainant relied upon, a medical literature "EAU Guidelines on Iatrogenic Trauma" and the judgment of this Commission reported in V.K. Mehta (Col.) and Mehta Urology and Surgical Centre v. Vimla Devi, : and referred to para 20, of the judgment, wherein it was observed that - "What constitutes Medical Negligence? The judgment of Hon''ble Supreme Court in Malay Kumar Ganguly v. Dr. Sukumar Mukharjee & ors, : (2009) SSC 221, III (2009) CPJ 17(SC); wherein it has been observed as follows:

"Even the matter of determining deficiency in medical service, it is now well settled that if representation is made by a doctor that he is a specialist and ultimately turns out that he is not, deficiency in medical services would be presumed."

Even the Hon''ble Supreme Court in Jacob Mathew V State of Punjab & Anr, : (2005) 6 SSC 1 : III (2005) CPJ 9 (SC) had concluded that,

" a professional may be held liable on one of two findings : either he was not possessed of requisite skill which he professed to have possessed, or, he did not exercise reasonable competence in given case, the skill which he did possess."

6. IN the case V.K. Mehta (Col.) and Mehta Urology and Surgical Centre v. Vimla Devi, decided by this commission, that the facts are different, that one Urologist performed Cholecystectomy which was negligence. But, in this instant case, in late 1990s most of the experienced surgeons were performing prostatectomy/ TUPR. (Ref para 5 supra). Therefore, every mishap or mischance cannot be equated with a medical negligence. Even according to Malay Kumar Gangly, and

the Jacob Mathew''s case we don''t find any negligence of Dr. Pankaj Mutenja, because is a qualified Suregon, his credentials prove that, he has vast experience and skill of about 10 -12 years in performing urological surgeries. He had exercised reasonable competence, professional judgment and care during the TURP surgery on the patient, and during post -operative period. The patient and the compliant were aware of his qualifications. Therefore, we feel that, it is worthwhile to mention here the Bolam''s case (Bolam v. Frien Hospital Management Committee, (1957) 1 WLR 582, wherein it was held that "a doctor is not negligent if he is acting in accordance with standard practice merely because there is a body of opinion who would take a contrary view." In the case of Kusum Sharma v. Batra Hospital Hon''ble Apex Court observed that -

"the normal human tendency is to pick fault whenever there is a death in the family for which the doctor cannot be made a scapegoat. It is a matter of common knowledge that after some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. Filing such CPA complaints against doctors on the rise and in many cases these being frivolous, the Bench said, "Courts have to be extremely careful to ensure that unnecessarily, professionals are not harassed and (or else) they will not be able to carry out their professional duties without fear."

We need to analyse meticulously about the surgical "Competency" rather than surgical "Expertise". It was known that, beginning in the late 19th century; surgeons were trained and assessed in a prolonged and organized fashion under the supervision of senior doctors, who later reached the competent level of performance. Confusion is apparent when patients and doctors define "Surgical Competency", for the patient and family. ''Competency'' is the complex set of "skills" that contribute to an excellent outcome. The definition of ''expert'' and ''expertise'' can vary from specialty to specialty and even within surgical specialty. Hence, in this case, the OP -1 doctor was a surgeon, having experience and he was competent in conducting urological surgeries. Thus, by mere not possessing Urology qualification is not negligence in this case. We don''t find as there was no delay, he referred the patient to Jaipur Golden Hospital for septicaemia which was not responding to the treatment available at Panipat.

7. THEREFORE , for the reasons stated above and considering the entirety of the case, we are of the considered view that, Dr. Pankaj Mutenja at OP -1 was not negligent during performing operation and during treatment of post -operative complications. He acted with due care and caution, as per reasonable standards of medical practice. Accordingly, we allow the First Appeal No. 223 of 2010 filed by the OP and dismiss the First Appeal No. FA/200 of 2010 and the complaint. The parties are directed to bear their own costs.

