(2015) 11 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Case No : 8 of 2015

DR. MOHIB HAMIDI — APPELLANT

Vs

NAND KISHORE PRASAD & 4 ORS — RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Citation : 2016 1 CPR 87

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

Advocate : Sahil Bhalaik

Judgement

1. For the reasons stated in the application for condonation of delay, we condone the delay of five days in filing this first appeal.

2. The complainant''s son Sanjay Kumar (herein referred as "patient") died during the course of treatment at Kurji Family Hospital where the opposite parties are working. Relevant facts in brief are that Sanjay Kumar aged about 15 years, 9 th class student had severe abdominal pain with fever and hemorrhages in both eyes. He was taken to Dr. Arun Tiwari, a Physician on 08-11-1995, who advised some blood tests and medicines. He was further advised to consult eye specialist for the hemorrhages in the eyes. After seeing the blood reports, Dr. Tiwari referred the patient to Kurji Holy Family hospital-OP 1 on 10-11-1995. The patient was admitted in OP 1-hospital at 8:00 AM, further blood tests, x-ray and USG investigations were advised. He was seen by a surgeon, Dr. M.M. Hamidi (OP 3). The blood platelets were very low, despite it; the OP 3 performed the operation on 11-11-1995. After operation the patient''s relatives could see the patient only on 12-11-1995 and found that the patient was bleeding excessively from the wound site, nose and mouth. The nasal packs were given. The dressing of operated wound was soaked by blood. It was due to low platelets and no remedial measures were taken to increase the platelets so as to control the bleeding. The patient became serious hence the complainant got discharged his son on 13-11-1995 at 2:00 P.M., he took him to Patna Medical College Hospital and admitted under Dr. U.P. Singh, Professor and HOD of Surgery who expressed

that the patient is hemophilic. Despite several efforts patient could not be saved and ultimately died on 16-11-1995. The complainant alleged that it was the case of number of round worms in his gut; surgery was not required and can be treated medically. Even if the surgery was necessary, the OP did not take fitness for operation. The platelet count was 35000 / cmm. Therefore, during surgery the patient bled excessively, which resulted into the death. The complainant filed the complaint before the Bihar State Commission.

3. The State Commission allowed the complaint and directed the OP-hospital to pay Rs.4,00,000/- and the OP 3/Appellant to pay Rs.2,00,000/- to the complainant with 6% simple interest from the date of filing of the complaint. The OP-hospital was also directed to pay the cost of the medical treatment of Rs.32,000/- and litigation cost of Rs.25,000/-. Aggrieved by this order the Appellant/ OP 3, Dr. M.M. Hamidi filed this First Appeal.

4. We have heard both the parties. Counsel for the appellant vehemently argued that it was an emergency case and the operation was necessary to relieve the pain of the patient. There was no time to wait for increase in the platelet count. The patient was fit for surgery. Therefore, the decision of emergency exploratory laparotomy was taken for extraction of round worms. The Bleeding time (BT) and Clotting Time(CT) was normal. To increase platelets, two units of blood were transfused before the operation which was sufficient to increase the platelet count. Large numbers of worms were extracted after making nick in the small intestine. Since the patient was bleeding after operation he was again given two units of blood. The patient improved on 13-11-1995. However, on the same day the patient''s father got him discharged against medical advice at 2:00 P.M. and took him to PMCH where he died on 16-11-1995.

5. The complainant Mr. Nand Kishore Prasad was present in person, he argued that the doctor at PMCH opined the patient as hemophilic. It was the duty of OP-3 necessary to find out whether the patient was fit for surgery on the said date. We have perused the blood reports. The platelet count was 35000/cmm against the normal range of 1.5-4 lacs/cmm. The State Commission recorded the evidence of Dr. Hare Ram Singh, Medical Officer who gave the opinion that the platelets were excessively low no surgery should be resorted without increasing the platelet count. Even the PCMH, Professor and HOD after examining the patient made a caution that it was a case of hemophilia.

6. We have perused the medical record. The laboratory report dated 10-11-1995 revealed "platelet count was decreased". The BT was 3 min. and CT was 6 min. The Operative findings are as follows: "Name(s) of Operation(s) : Exp. Lap. & Extraction of R.W. Operative Findings: Numerous R.W. in the small gut with yellowish collection of fluid in the peritoneal cavity.

Procedure: The abdomen was opened by midline incision above and below the umbilicus. The peritoneal cavity was found to contain yellowish fluid a small amount of which was collected and sent for c/s & biomedical examination. The

small gut was found to contain many round worms. They were collected at one place and extracted out by making a nick in the gut. The wound was closed in layers. A rubber corrugated drain was placed in the peritoneal cavity. The abdomen was closed in one layer by vieryl. skin was left open."

7. The medical record revealed to us that, the patient was admitted in OP-hospital at 10:15 PM. on 10-11-1995 and the OP recorded the history as "A 15 years old male patient is admitted in 3A-7 with the complaints of fever, pain abdomen and hemorrhage from both eyes since 5 days."

The OP operated the patient on 11-11-1995 in the morning hours. Thereafter, at 2:20 P.M. the patient had drainage of bloody fluid and also episode of epistaxis. The nasal packing was given, but still there was bleeding from nose and mouth. The operated wound dressing was soaked with blood. At 4:00 P.M. the wound site was bleeding excessively. OP-3 performed suturing of the wound again. The patient was critical. The episodes of repeated bleeding were continuous till 13-11-2015 up to 11:40 A.M. The patient got discharged at 11:45 A.M. on 13-11-2015 and went to PCMS, where he was diagnosed as a case of hemophilia.

8. We are surprised that, how the OP-3 failed to diagnose the patient''s condition as one of the bleeding disorders? There was clear history that, the patient was admitted with sub-conjunctival hemorrhages in the eye. Hence, it was the duty of the doctor to investigate the patient thoroughly before proceeding towards the treatment and the surgery. The OP has not performed the basic investigation like Prothrombin time(PT) and Activated Partial Thromboplastin Time(APTT) which, would have been useful to diagnose bleeding disorder in this patient.

9. In the instant case, OP-3, ignored the low platelet count of the patient. The ringing bell was ignored by OP-3, and a transfusion of 2 unit of whole blood was not a proper decision. Patient should have given Fresh Frozen Plasma (FFP) or Platelet concentrates (PC). No doubt, we accept that, the OP is a qualified and experienced surgeon. He had performed basic investigations, ultrasonography (USG). He performed an emergency surgery to save the life of child and avoid complications of intestinal perforation by the round worms. Therefore, we are of considered view that, OP-3 was wee bit negligent for failure to diagnose bleeding tendency (hemophilia). The treatment of hemophilia needs transfusion of clotting factors, but during 1995 very few centers in India had such facility.

10. The State Commission held the hospital vicariously liable for the negligent act of OP-3. The hospital has paid the compensation awarded by the State Commission. In our view it is just and proper compensation. Therefore, the complainant does not deserve any more compensation. We, therefore, modify the order of the State Commission by setting aside the order regarding the liability of OP. The OP-3 is warned to be careful in future. With these terms the First Appeal is partly allowed.

