

(2013) 05 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

Dr. Ved Prakash Yadav

APPELLANT

Vs

NIHAL SINGH , United India Insurance Co. Ltd. Branch
Office-4 16-M, Gole Market Maha Nagar

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 438 : 2013 3 CPJ 140

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

Advocate : M.C.GUPTA , NIHAL SINGH

Judgement

1. ON 17-2-2005, the Respondent/Complainant came to the Petitioner/Respondent with severe pain in the abdomen. He brought with him an X-ray and an ultrasound report advised by another doctor. On the basis of those reports the complainant was diagnosed as a case of peptic ulcer, which had perforated and caused peritonitis and needed immediate life-saving surgery. The diagnosis and proposed surgical treatment and its urgency and likely outcome were explained to him and he gave informed consent for surgery. Surgery was performed under anesthesia given by a qualified anesthetist. The duodenum was found to be perforated. There was pus in the abdomen. The perforation was surgically closed. The pus was removed. The operation was successful and the Complainant 's life was saved. He was discharged from the Hospital on 26.02.2005 in a healthy condition. A modest fee of Rs.10,000/- was charged for various services from 17.02.2005 to 26.02.2005; Surgeon 's fee; Anesthetist 's fee; OT charges; medicines and disposables.

2. THE complainant came for follow up review on 29.02.2005 and again on 04.03.2005 when stitches were removed. His condition was healthy. He had no complaints. After lapse of 9 months complainant developed incisional hernia. He consulted at Hindu Rao Hospital during 11/11/2005 to 18/11/2005. The doctors of there at Hindu Rao Hospital who examined him for the incisional hernia stated that the operation conducted by Dr. Ved Yadav (OP) was wrong due to which he has to suffer. Alleging the medical negligence a complaint was filed in District

Consumer Disputes Redressal Forum (herein District Forum).

3. THE District forum on appraisal of pleadings of parties and evidence on record dismissed the complaint. Against the order of District Forum complainant filed an appeal No 49/2008 before State Commission

4. THE State Commission heard both the parties and perused all the documents on the file related to treatment chart of OP and other hospitals but State Commission was not in opinion of occurrence medical negligence by the OP. Also there was no expert opinion on the file that the treatment given by OP was not up to the medical standards. State Commission considered the reference made by District Forum who relied upon standard medical book on "Principles of Surgery " and on perusal of the same clearly reads as under: - " Incisional hernias result of a healing failure of a prior abdominal wall surgical closure. Although estimates of incidence vary, careful investigation shows that they occur in at least 10 to 15% of all laparotomy incisions. Incisional hernias may be asymptomatic or present with pain, incarceration, or strangulation. Risk factors for the development of a ventral incisional obesity, immuno suppression, and chronologically increased intra-abdominal pressure. "

The state Commission concluded the case with observations as follows: "Having taking into consideration the facts and circumstances of the case and the documents available on the record, we do not find any kind of medical negligence and deficiency in service on the part of the treating doctor-opposite party No.1. However, at the same it has to be kept in mind that the appellant-complainant has appeared before us. We have physically seen the operated portion where tissues of the complainant become weak. The complainant is a poor person and needs medical treatment again because the operation conducted by the opposite party No.1 could not give desired result. Under the facts and circumstances of the case we feel that the complainant, who is a poor person and cannot afford the expenses of second operation, should be compensated enabling him to get further treatment as a goodwill gesture. In our view whatever fee has been paid by the complainant to the opposite party no.1 i.e. Rs.16, 000/- be refunded to him as a goodwill gesture. "

5. STATE Commission ordered the OP to pay Rs.16000/-

6. AGAINST the order of State Commission, this revision. We have heard arguments of counsel of the petitioner and the complainant who was present in person.

7. THERE was no dispute that OP operated the patient and after 9 months complainant developed incisional hernia. We have perused the evidence of the parties on file and the standard medical texts, books.

8. THE evidence of OP suggested that occurrence of Incisional Hernia was a known complication and due to healing defect of patient; and there was no negligence. At the first instance the condition of patient was Peptic perforation

and peritonitis. Pus was also removed from abdomen. Therefore, it is clear that OP conducted the operation with standards of medical practice. As, there was peritonitis some patients show delayed healing of operated wound which is one of the cause for incisional hernia. This textbook paragraph cited supra clearly reveals that the incisional hernia was the result of healing failure of a prior abdominal wall surgical closure. After 9 months during the occurrence of incisional hernia the complainant was given an opportunity by OP to operate the complainant again but the complainant wanted to take benefit of his abnormal physical condition and further his refusal to take any treatment from the doctor itself suggests that he himself is not interested to cure his problem. The complainant consulted Hindu Rao Hospital, which is a Government Hospital where treatment is done free. Accordingly pre anesthetic checkup of complainant was performed on 18/11/2005 but he did not undergo surgery at the said hospital with an ulterior motive.

9. THEREFORE , we do not find any element of medical negligence on the part of OP. The State Commission ordered payment of Rs.16000/- on the basis of Goodwill Gesture; which is not prescribed under any law. Therefore we set aside the order of State Commission.

10. THE revision petition is accordingly accepted. No costs.