(2012) 09 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Escorts Heart Institute And Research Centre — APPELLANT

Vs

Harbans Kaur Chawla — RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 529 : 2012 3 UC 1899

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Rajeev Sharma , Sahil Bhalaik , Uddyan Mukherjee , Parinav Gupta , Pradeep Gupta

Judgement

1. ESCORTS Heart Institute & Research Centre (hereinafter referred to as the ''Appellant/Institute '') have filed this First Appeal being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the ''State Commission '') which allowed the complaint of medical negligence filed against it by Mrs.Harbans Kaur Chawla (hereinafter referred to as ''Respondent No.1 '') and two others.

2. FACTS: Respondent No.1 had been admitted for Coronary Artery Bypass Grafting in the Appellant/Institute and on 30.01.1995 during the course of this surgery, 4 units of blood from the Appellant ''s blood bank were transfused into her. On 29.03.1995, it was noted that she had lost her appetite, could not take food and had developed fever along with drowsiness and giddiness. Respondent No.1, therefore, contacted one Dr.B.S. Bhatia at P.G.I. Hospital, Chandigarh who after conducting a series of tests including blood and urine tests, on 30.03.1995 informed her that she had contracted Hepatitis B infection due to transfusion of blood at the time of surgery in Appellant/Institute and advised her to seek urgent admission in P.G.I. Hospital, Chandigarh for treatment. A viral marker test confirmed that Hepatitis B had been caused by transfusion of HBs Ag infected blood by Appellant/Institute ''s blood bank which according to Respondents was due to lack of proper screening of the blood which is an essential requirement. Despite treatment for damaged liver, faulty renal function etc. Respondent No.1 did not fully recover from the side effects of Hepatitis B as is confirmed from the

report dated 08.09.1995 of specialists of P.G.I. Hospital, Chandigarh. Being aggrieved, Respondents filed a complaint before the State Commission on grounds of medical negligence and deficiency in service and requested that Appellant/Institute be directed to refund the amount of Rs.1,65,250/- spent on the Heart Bypass Surgery at the Appellant/Institute, Rs.25,000/- towards expenses incurred for treatment at PGI Hospital, Chandigarh and Rs.5 lakhs towards permanent disability caused to Respondent No.1 along with interest @ 24% per annum w.e.f. 17.04.1995 till the date of realization. Appellant on being served denied that there was any negligence on its part in treating the Respondent No.1. It was stated that all blood donated in the Appellant ''s blood bank is duly screened to ensure that it is HBs Ag negative. This is done through a well acknowledged test i.e. ELISA test. However, since this test does not have 100% accuracy because it cannot always detect virus in the blood particularly during the early stages of incubation, incidence of post-transfusion jaundice are known to occur. In the instant case, the blood received from the 4 donors was carefully screened and tested before transfusion and this is confirmed by credible documentary evidence on record. It was further stated that nowhere did the doctors in P.G.I. Hospital, Chandigarh state that Hepatitis B that was contracted by Respondent No.1, was due to transfusion of infected blood from the Appellant/ Institute. The State Commission after hearing both parties and on the basis of evidence filed before it, partly allowed the complaint. The relevant part of the order of the State Commission is reproduced: "The complainant was an old lady of 69 years age. She went through bypass surgery. The discharge summary issued by the OP-Escorts hospital shows that she was given transfusion of four units of blood and was not suffering from any ailment or any complication of any kind that could have resulted in the hepatitis B virus. As per medical literature (Ex.P-5A) the incubation period is between 40 days to 180 days whereas the complainant suffered hepatitis B virus after 60 days of transfusion and the only inference derivable is that it was because of the blood which was of sub-standard that the virus was caused. Since she was a resident of Chandigarh and since she got herself admitted in the PGI, Chandigarh as she faced this complication within 60 days of transfusion of blood. As per report of the PGI, Chandigarh, which the problem faced by the complainant was only due to the transfusion of blood. In the Discharge summary and follow-up card of PGI, Chandigarh dated 31.03.1995 in the title ''Course Management '' the patient was diagnosed as ''a case of post-transfusion hepatitis with Grade I and she was treated for hepatitis B virus in the PGI itself and since it is a Government Institute and not a competitor of the OP, there is no room for doubling the authenticity of the diagnosis given by the doctors of the PGI. "

The State Commission further held that in this case the doctors cannot be held responsible for any negligence and deficiency in service since it was the technicians in the Blood Bank who were negligent and therefore, it is the Appellant/Institute that is liable for deficiency in service and negligence. The State Commission taking into consideration all facts of this case directed that the

Appellant/Institute pay the Respondents a lump-sum compensation of Rs.50,000/-. Being aggrieved by this order, the present First Appeal has been filed by the Appellant/Institute.

Counsel for both parties made oral submissions. Counsel for Appellant contended that the State Commission erred in concluding that the Appellant/Institute was guilty of deficiency in service and negligence despite the fact that there was adequate evidence produced by the Appellant/Institute before the State Commission to indicate that necessary precautions were taken by it to screen the blood donated by donors before it was made available for transfusion. From the Blood Bank Register, the names of the persons who had donated blood as well as the laboratory results on the basis of which the blood was rejected or accepted depending on the ELISA test has been clearly indicated. This Register also indicated if the donor had any past history of diseases like Hepatitis B, AIDS etc. In the instant case, the 4 donors whose blood was transfused in the Respondent No.1 had no history of any of these diseases and the blood donated by them which was screened through the ELISA test also indicated that it was negative for the diseases screened including for HBs Ag and AIDS. When Counsel for Appellant was asked why the name of Respondent No.1 was not shown against the blood donors '' names and there were names of some other persons, it was clarified that often patient ''s relatives and friends donate blood in case it is required and if it is not utilized for transfusion by their patients, it is deposited in the blood bank for use by other needy recipients/patients. In the instant case, it is clearly documented that it was the blood from these 4 donors which after being properly screened was transfused into Respondent No.1 during the course of her surgery. However, as earlier contended before the State Commission, Counsel for appellant submitted that despite the screening of blood through the ELISA test, there is a possibility of the Hepatitis virus not being detected in the blood through this test if the virus is in the early stages of incubation. In support of this contention, Counsel for Appellant referred to a Book titled "Blood Transfusion in Clinical Medicine " (Blackwell Scientific Publication- 8th Edition) wherein it has been stated that "even after testing a blood, the overall frequency of hepatitis in patients receiving HBs Ag negative blood from volunteer donors was between 4 and 13% compared with 1-2% in untransfused patients (Alter 1985) ". In view of the above facts, it is clearly established that there was no medical negligence or deficiency in service on the part of Appellant/Institute. All due precautions and care was taken in the medical treatment of Respondent No.1 which was in accordance with internationally accepted standards and recognized medical practices including for screening of blood. The State Commission, therefore, erred in concluding that there was any deficiency in service on the part of the Appellant/Institute. Counsel for Respondents contended that the State Commission had rightly concluded based on the report of the P.G.I. Hospital, Chandigarh that Respondent No.1 had contracted Hepatitis B during the course of the cardiac surgery at the Appellant/Institute when she was transfused with blood which was infected with Hepatitis B virus. It also

needs to be noted that she did not undergo any other blood transfusion. This fact is confirmed in the Discharge Summery of P.G.I. Hospital, Chandigarh dated 31.03.1995 wherein the Respondent No.1 was diagnosed as a case of post-transfusion hepatitis. It was further contended that there were serious doubts in the minds of the Respondents that the blood transfused in her had been properly screened or that the donors whose blood according to the Appellant/Institute had been used for transfusion in Respondent No.1 ''s case was actually the blood donated by them since names of other recipients were mentioned in the register maintained by the Blood Bank of the Appellant/Institute. We have heard learned Counsel for both parties and have carefully gone through the evidence on record. We agree with the findings of the State Commission that there is adequate evidence on record to establish that there is clear nexus between the blood transfusion on the Respondent No.1 during the course of her cardiac surgery at the Appellant/Institute and her contracting Hepatitis B, 60 days later especially since Respondent No.1 had not undergone any other blood transfusion except at the Appellant/Institute. The report from P.G.I. Hospital, Chandigarh which is a highly reputed independent institution with specialized healthcare facilities has confirmed this fact in writing. We note that the Appellant/Institute has in its defence produced documentary evidence to show that there is proper screening of all blood donors as also the blood donated by them and the latter is done through the ELISA method. We also note that as per medical literature, it is internationally well-accepted that even after screening through a reliable test like the ELISA test, there is still a possibility of the Hepatitis virus not being detected in the blood if it is in the early stages of incubation which may have happened in the instant case. In this connection, we note that for screening of blood, two tests are in use: (i) ELISA test; and (ii) Radio Immunoassay test. We further note from medical literature extracted from Wikipedia that the Radio Immunoassay test vis-a-vis the ELISA test is considered to be more sensitive and specific and also less expensive method to screen blood for possible viruses and the American Red Cross routinely uses this test to screen blood. In this method, the antigen-antibody reaction is measured using radioactive signals whereas in the ELISA method it is measured by using colorimetric signals. It is also worth noting that ELISA test is not considered conclusive in detecting the HIV viruses and its results usually have to be confirmed by a subsequent test like the Western Blot Test. In view of these facts, perhaps, there is a case for Hospitals like the Appellant/Institute which conduct major surgeries to seriously consider whether the ELISA test can be replaced by a more reliable test. So far as the present case is concerned, we note that the State Commission has taken into account the fact that reasonable if not foolproof precautions were taken in screening the blood and therefore, it awarded a compensation of only Rs.50,000/- against the amount of Rs.6.95 lakhs claimed by the Respondents. We agree with the findings of the State Commission that keeping in view the facts of the case in their totality, a compensation of Rs.50,000/- is reasonable and justified in the instant case. We, therefore, uphold the order of the State Commission. The First Appeal is dismissed. Appellant/Institute is directed to pay

the Respondents Rs.50,000/- within six weeks from the date of receipt of this order.

