

(2018) 03 NCDRC CK 0159

In the National Consumer Disputes Redressal Commission

Case No : First Appeal No. 2491 Of 2017

Girishchandra V. Bhatt & Ors

APPELLANT

Vs

Sterling Hospital

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Consumer Protection Act, 1986 — Section 12(3), 18, 19(1)(a)

Citation : (2018) 03 NCDRC CK 0159

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

Bench : Single Bench

Advocate : Aditya Wadhwa, Debopriyo Moulik

Final Decision : Dismissed

Judgement

1. This appeal has been filed under Section 19(1)(a) of the Consumer Protection Act, 1986 (for short "the Act") against the order dated 28-07-

2017 passed by the Gujarat State Consumer Disputes Redressal Commission (for short "the State Commission") in Complaint No.CC/15/76 wherein

the complaint was dismissed at admission stage.

2. The complainants (nos.1&2) son, Hitharth met with bike accident on 22-10-2013 at about 04:45 P.M., the truck run over Hitharth. Immediately

he was admitted in Sterling Hospital (OP) at Rajkot. He was normal on admission with the exception of fractures. He was fully conscious for first two

days without any major problems. All the reports were normal but thereafter his condition worsened and on 25-10-2010, he expired during treatment.

Since the death of Hitharth had taken place solely due to negligence and carelessness in providing the treatment, the OP is solely responsible for the

death of Hitharth. Therefore, alleging case of medical negligence complaint was filed before the State Consumer Disputes Redressal Commission,

Gujarat (for short "the State Commission").

3. The OP filed a written version and denied all the allegations regarding negligence during the treatment of Hitharth. The injured had suffered multiple bone fractures. The treatment was proper with due care but the death was due to cardio respiratory arrest. The doctors at OP hospital tried every effort to save the injured.

4. On the basis of pleadings and arguments the State Commission dismissed the complaint at admission stage under Section 12 (3) read with Section

18 of the Consumer Protection Act, 1986. Being aggrieved the complainant filed the instant appeal before this Commission.

5. At the admission stage I have heard the learned counsel for the appellant, he submitted that Mr. Hitharth suffered multiple fracture injury on 22-10-

2013 at Rajkot and he was admitted to Sterling Hospital for the treatment of simple fracture injuries. He was treated in ICU. For the first two days his

condition seemed normal, he was talking with relatives, all the vitals and reports including CT scan was normal. However, from 24/25-10-2013 his

condition started deteriorating. The OP failed to provide proper treatment. The haemoglobin level of the patient was going down which was not

managed properly and further the lung infection was not controlled. Due to lethargic, negligent and sub-standard treatment from the OP, Mr. Hitharth

passed away. His Post-Mortem (PM) report was stage managed by the OP. It was stated that the cause of death as "cardio respiratory failure

due to poly trauma and its complications". It was a simple fracture which could not resulted into the death of the patient. Therefore, it was

negligence on the part of the OP.

6. The counsel further submitted that the State Commission has totally ignored Expert opinion and dismissed the complaint without giving any findings

on the Expert opinion; thus, it was against the law. He further submitted that there was no evidence to show the patient suffered DIC. The D-Dimer

test showed abnormality which was indicative of fibrin degradation products. Thus, there were chances of clot formation and break down in the body.

It was missed by OP. Even the OP did not care for low level of haemoglobin, albumin, etc.. The OP did not perform investigation properly; therefore,

it was a deficiency and negligence during the treatment. The counsel further submitted that dismissal of complaint at admission stage will cause severe

injustice to the complainant. For this submission he relied upon the judgment of Honâ??ble Apex Court in the case of Dr. V. N. Srikhanda Vs. Anita

Sena Fernandes, 2011(1) SCC 53. The Court in paragraph 17 of the judgment held as below:

â??17. We may hasten to add that the power conferred upon the Consumer Forums under Sections 12(3), 18 or 22 to reject the complaint at the stage of admission should not be exercised lightly because the Act has been enacted to provide for better protection of the interest of consumers and the speedy and inexpensive redressal mechanism enshrined therein is in addition to other remedies which may be available to the consumer under the ordinary law of the land. Therefore, admission of the complaint filed under the Act should be the rule and dismissal thereof should be an exception. Of course, if the complaint is barred by time, the Consumer Forum is bound to dismiss the same unless the consumer makes out a case for condonation of delay under Section 24-A (2). The facts are different in the instant case because Dr. V. N. Srikhandaâ??s case was on the point of limitation.

7. The counsel further submitted that the State Commission has not given any findings and considered the Expert opinion to admit the complaint. The

State Commission shall make reference to the medical literature and expert evidence before deciding the case. In this context the counsel relied upon

one decision of this Commission in FA No.187 of 2001, P. Venkata Lakshmi Vs. Y. Savitha Devi , II (2004) CPJ 14 (NC). The relevant paragraph of

the judgment is reproduced as below:

â??One of the major for our consideration brought by the learned counsel for the appellant is that in order of the State Commission, while there is

liberal reference to the medical literature put forward by the respondents, there is no reference to the medical literature produced by the complainant

on each of the issue raised before us. Our attention was drawn toward the voluminous medical literature presented before the State Commission by

them, but not considered by the State Commission. Absence of expert evidence has also been referred to as one of the grounds of â??no-proofâ?? of

negligence. We have seen the material on record and find that while no expert witness has been produced/examined by the appellant, we have to see

this in â??ground realityâ?? terms, that very rarely, if ever, any other doctor comes forward to give evidence in person or by way of evidence against

other doctor.

In this case this gap was amply made good by producing literature on all the points at issue — meconium — foetal distress administration and

complication of use of syntocinon, caesarean section when to do in such cases, and on host of other points associated with the decision making

process on the issues included in the case. We see no reference to any of the literature produced by the appellant, on which she relied upon to support

her complaint. We also see that there is no record on any cross-examination on record which we are unable to appreciate. We see merit in the prayer

made before us by the learned counsel for the appellant that this case be remanded for rehearing and also examination or obtaining the opinion of an

expert in the subject considered appropriate by the Commission. —

In my view the facts are different from the present case. In the instant case the complainant had filed Expert opinion which was considered by the

State Commission and thereafter the order was passed.

8. I have perused the impugned order of the State Commission, the relevant record from the OP hospital. The main contention of counsel for the

complainant is that Hitharth's death was not due to injuries but he was died due to wrong treatment from the OP hospital. On admission to the

hospital the record shows he suffered multiple fractures. The report of CT scan of abdomen with pelvis done on 23-10-2013 revealed following

findings:

— Fracture of bilateral iliac bone posteriorly, left sacral ala, anterior column of right acetabulum, bilateral superior and inferior pubic rami and

proximal sacral segment (2) on left side. Fracture is also seen involving lower sacral segment on right side with displaced fracture fragment lies in

presacral region indenting posterior wall of rectum. Fracture is seen involving right transverse process of L2 and L3 vertebra. No leak of contrast

from distal colon is seen. No evident pneumoperitoneum or significant peritoneal collection is seen except thin stripe of fluid in right parahepatic

region. —

9. The x-rays showed that the patient had suffered fracture in the right Knee joint, bilateral superior and inferior Pubic rami. Also there was a fracture

involving bilateral iliac posteriorly and left sacral ala, fracture of right lower margin of the sacrum with displaced fracture segment. The x-ray of

Lumbo Sacral spine revealed fracture of right transverse process of L2-L3 vertebrae. As per USG abdomen and pelvis showed there was a clot and

mild perivesical hematoma. Therefore, the gravity of injuries can be ascertained on the day of admission i.e. 22-10-2013. Thus, the submission of the

appellants that only one fracture injury was there is unsustainable.

10. The other laboratory reports like D-Dimer was 3 mcg/ml which is on higher side. Similarly, the CPK levels are 4741 units/ltr (normal 55 to 170).

It clearly indicates there was deterioration of patient during course of treatment. On perusal of discharge summary it is clear that the patient was

initially investigated and treated with higher antibiotics, the CT scan and X-ray reports also showed multiple fractures. I have perused the PM report

also. The complainant alleged that there was a mischief done by the doctor who performed PM and the departmental inquiry had been initiated against

him. In this context, I have perused the PM report. It showed haematoma in the chest wall but the size, extent of haematoma was not explained by the

doctor who performed the PM. He has not mentioned correctly the fracture injuries on the body of the deceased. In my view there was no fault in

recording the PM findings.

On admission the OP hospital conducted series of x rays, pathology tests, sonography, CT scan of thorax and abdomen, LFT and immunoassays also.

The USG abdomen and pelvis revealed clot and mild haematoma. It is pertinent to note that due to internal bleeding the OP managed the patient with

transfusion by whole blood, blood components like Fresh Frozen Plasma (FFP), Red Blood Concentrate (RCC), Platelet Concentrate (PC), White

Blood Concentrate (WBC), Platelet Apheresis (SDP). Thus, in my view the OP hospital took reasonable care, which was a standard of care during

the emergency. During hospitalisation the patient was administered higher antibiotics also but despite all efforts the patient's condition deteriorated

and there was bleeding. The CPK and D-Dimer abnormal values clearly indicative of extensive muscle damage and DIC. Therefore, it was not the

negligence on the part of the treating doctor.

11. I have perused the Expert opinion which was given by Dr. Nitin Shah, an experienced surgeon qualified to be MS. On bare reading of entire

Expert report in my view the Expert is trying to give his suggestions to the State Commission i.e. adjudicating body that, 'admit the matter'. The

relevant text from the Expert opinion is reproduced as below:

“I have been provided the medical file papers and consumer complaint copy relating to the death of Late Heetarth Bhatt. I have gone through the

entire file, the consumer complaint and preliminary reply filed by the opponent. Based on this opinion and upon relying on the documents on record, the

Honorable Commission may admit and eventually allow the complaint rightly filed for medical negligence of death of Late Mr. Bhatt.

The matter may be admitted and finally be allowed in favour of the complainants due to the detailed opinion below. The Honorable Commission may

entertain and allow the matter to ascertain as to what went wrong and what were the lapses. It seems that the skilled people did not act as per

accepted medical norms. The skilled staff did not act promptly to handle such life threatening emergency condition which developed post admission to

the hospital of a young promising boy.”

12. The expert also opined that the patient was given platelets and two bottles of blood which proves to be negligence on the part of the OPs. He also

questioned about the mismatch blood transfusion or very fast transfusion. I am rather surprised that how the expert arrived to the conclusion of

mismatching of the blood without any cogent evidence. The OP had transfused the blood after knowing the deteriorating haemoglobin level and the

bleeding also. Similarly, he has commented on the infection as suspected hospital infection which is also a baseless submission. The expert in

paragraphs 15 and 16 mentioned as below:

“15. The complainants have complained that they were not kept in loop during the treatment process. They were not allowed normal visiting hours

in the ICU. This directly goes against the hospital policy and rights of the patients as enumerated by the opponent themselves.

16. It is also submitted by the complainants that the treating doctors in addition to treating the ICU patients had large number of patients in the OPD

department. This shows that the treatment was done with negligence or minimal involvement of the main doctors under whom they had been

admitted.”

13. According to the hospital policy and international ICU norms the visitors are not allowed randomly and the hospital shall prohibit multiple visitors to

the ICU for protection of other patients also. Thus, the above observation is

ridiculous one.

14. The expert witness plays an essential role in determining medical negligence and the courts by and large rely on expert witness testimony to

establish the standards of care germane to a medical negligence case. Generally, the purpose of expert witness is to describe standards of care

relevant to a given case, identify any breaches in those standards, and if so noted, render an opinion as to whether those breaches are the most likely

cause of injury. The expert witness is given more latitude. The expert witness is allowed to compare the applicable standards of care with the facts of

the case and interpret whether the evidence indicates a deviation from the standards of care. The medical expert also provides an opinion (within a

reasonable degree of medical certainty) as to whether that breach in care is the most likely cause of the patient's injury. The expert opinion will

not carry any value, if it is without the expert's explanation of the range of acceptable treatment modalities within the standard of care and

interpretation of medical facts.

In my view the expert opinion in the instant case has failed to explain the elements of medical negligence. It is just a vague. It appears that, the expert

is trying to favour the complainant and repeatedly making recommendation to the State Commission to admit the complaint and decide in the

interest of justice; which is not a duty of an expert.

Therefore, the expert opinion is not acceptable one as it has no evidentiary value. .

15. Considering the sequence of events and on perusal of the medical record it is clear that the deceased had suffered multiple fractures and was

properly treated on emergency basis at OP hospital. The discharge summary clearly shows the details. The active bleeding and haematoma was

treated by transfusion of blood and blood products as needed. The patient was monitored in the ICU during hospitalisation but unfortunately suffered

respiratory arrest. The doctors immediately performed intubation and the patient was put on ventilator. The ionotropic drugs were also started but later

on the patient suffered cardiac arrest at 09:30 P.M. and CPR was given as per ACLS protocol but the patient was dead by 10:16 P.M.

16. It is settled law that the onus to prove medical negligence lies largely on the complainant and that this onus can be discharged by leading cogent

evidence. A mere averment in a complaint by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be

proved. It is the obligation of the complainant to provide the facta probanda as well as the facta probantia . In my view the present the Consumer

Complaint completely lacks facta probantia and ought to be dismissed on that ground alone.

The Honâ??ble Supreme Court in Kusum Sharma Vs. Batra Hosptial and Medical Research Centre, (2010) 3 SCC 480, has observed that

â?? 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 happening of 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 complaints under the Consumer Protection Act against doctors on the rise and in many cases these being frivolous, the

Honâ??ble Supreme Court said â??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 fearâ?? .

17. On the basis of foregoing discussion I do not find any illegality or perversity in the well-reasoned order of the State Commission. Hence, the appeal

is hereby dismissed in limine .