(2013) 05 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

G.K. Sabharwal , Jaishree Sabharwal Both R/O A-3/78, Varun Aptt. — APPELLANT

Vs

Satish Virmani , Rajiv Chawla, Md Consultant Physician Cardiologist 180, Jai Apartment, Sector-9 Rohini , Randhir Sood Gastroenterologist Sir Ganga Ram Hospital Rajinder Nag — RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 436 : 2013 3 CPJ 95

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Advocate : SUNIL MALHOTRA , G.K.Sabharwal , NEERAJ JAIN , ROOHI KOHLI , PRADHAN , VIPIN JAI , SUBHASH KUMAR

Judgement

1. FIRST Appeal No. 65 of 2008 has been filed by Shri G.K. Sabharwal and another, Original Complainants before the Delhi State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) being aggrieved by the order of that Commission, which had granted them lesser compensation of Rs.50,000/- and Rs.10,000/- towards litigation costs against their claim of Rs.20,00,000/- and dismissed the complaint of medical negligence against OPs No.1, 4 and 5. First Appeal No. 72 of 2008 has been filed by Dr. Rajiv Chawla and Santom Hospital, OPs No. 2 and 3 before the State Commission, being aggrieved by its order holding them guilty of negligence in not conducting proper investigations in the medical treatment and directing them to jointly and severally pay the Complainants a lump-sum compensation of Rs.50,000/- alongwith Rs.10,000/- as costs. Since the facts and the parties in both appeals are common arising out of the same consumer complaint, it is proposed to dispose of these appeals by a common order by taking the facts from First Appeal No. 65 of 2008. The parties will be referred to in the manner in which they were referred to in the complaint i.e. Shri G.K. Sabharwal and Smt. Jaishree Sabharwal as Complainants, Dr. Satish Virmani as OP-1, Dr. Rajiv Chawla as OP-2, Santom Hospital as OP-3, Dr. Ranghir Sood as OP-4 and Sir Ganga Ram Hospital as OP-5.

2. IN their complaint before the State Commission, Complainants had contended that their daughter Miss Sonal Sabharwal (hereinafter referred to as the Patient) aged about 19 years was running a fever of 103 on 03.10.1997 and was taken for medical treatment to one Dr. Satish Virmani/OP-1, who gave her medication and advised blood tests for Malaria, Hepatitis, Typhoid etc. The tests were negative for Malaria, Bilurubin as also Typhoid but since platelet counts were below normal limits, and Patient ''s condition did not improve, OP-1 advised Complainants to take her to OP-2, who was a Specialist. After examination of the Patient, OP-2 advised the Complainants to admit the Patient to Santom Hospital/ OP-3 for necessary investigations and treatment. It was contended that although the blood tests conducted there were again negative for Malaria, all other symptoms, including very low platelet counts and high temperature were clearly indicative of Malaria but OP-2 did not give any medication for Malaria and on the other hand diagnosed it to be a case of viral hepatitis, for which treatment was given to the Patient till she was shifted to Sir Ganga Ram Hospital/OP5. Even in that hospital, there was delay on the part of OP-4 (Doctor of OP-5/Hospital) in starting the treatment since the Patient was brought at 8.30 a.m. on 07.10.1997 and by the time her treatment was started, her platelet counts had come down to 48000. She was detected with Cerebral Malaria at a very late stage and even though Mefloquin was administered, it was too late. Patient was not put on life support nor was she taken to ICU. Because of the negligence on the part of all the OPs, the Patient could not be saved. Being aggrieved, Complainants filed a complaint before the State Commission requesting that they be awarded compensation of Rs.20,00,000/- with interest @ 24% per annum from the date of death of the Patient till realization for the irreparable loss suffered by them. Ops on being served filed their written rejoinders. OP-1 contended that he had treated the Patient only for one day and after giving the required medication and advising blood tests immediately referred the Patient to a Specialist namely OP-2. OP-2 contended that he first saw the Patient on 05.10.1997 and since he was only having a consulting chamber without the required facilities for investigations and tests, he referred her to OP-3/Santom Hospital, where all the necessary investigations/tests were carried out. It was contended that the Patient had told Ops that she had gone to different hospitals and had completed a full course of anti-malaria (Chloroquinine) at Mangalore. OP-2 further got conducted several investigations both clinical and diagnostic, including three consecutive slides for Malaria, which indicated that it was negative for the same. In this background coupled with gradually increasing Bilurubin levels, low platelet counts and with an ultrasound abdomen report suggesting viral hepatitis and encephalopathy, medical treatment was accordingly started. Further, that the clinical symptoms of the Patient were not peculiar to Malaria and could occur in a number of other illness including viral hepatitis, viral encephalitis, dengue fever and enteric fever and in view of these facts and since all 3 slides were negative for Malaria, there was no reason to suspect that Patient had Malaria. However, when the Patient ''s condition did not improve, a Specialist Gastroenterologist was called and on his advice to rule out Malaria or Encephalitis Patient was

immediately referred to OP-5/Hospital, which is a super speciality hospital with advanced facilities. OP-4 (a Doctor of OP-5/Hospital) also denied any deficiency or negligence on their part. It was stated that Mefloquin, which is safe drug of choice, was immediately administered when the Patient was detected with Cerebral Malaria following a series of tests, including blood tests. There was no need for any life support equipments or ICU care since the only life-saving drug available for Cerebral Malaria had been administered to the Patient. The Patient remained in OP-5/Hospital for only one day before she passed away.

3. THE State Commission after hearing the parties and on the basis of evidence produced before it, concluded that OPs 1, 4 and 5 who had treated the Patient for only one day each were not guilty of medical negligence. However, the State Commission found OPs 2 and 3 guilty of medical negligence in not conducting proper investigations by observing as follows : "28. ... At no stage the patient had full course of anti-malarial chloroquine when she was brought to OP No.2 and 3. Any reference in this regard is of doubtful nature as OP No.2 and 3 should have ensured that patient had full course of anti-malarial chloroquine on perusing the previous prescription. Thus OP No.2 and 3 are guilty of negligence in either not conducting the tests properly or not giving the proper treatment. 31. In the result, we find only OP No.2 and 3 guilty for negligence in not conducting proper investigation by believing though it was emphatically denied by complainant that the deceased had already taken anti-malarial treatment and not giving the proper and requisite treatment. In the given facts and circumstances of the case we deem that lumpsum compensation of Rs. 50,000/- and Rs. 10,000/- towards cost of litigation shall meet the ends of justice. Remaining OPs are absolved from the charge of negligence. "

4. HENCE , the present two appeals by OPs and Complainant, the latter seeking enhancement of compensation awarded by the State Commission. Learned Counsel for all parties made oral submissions.

5. LEARNED Counsel for OP-1 stated that the State Commission had rightly concluded that there was no medical negligence on his part. The Patient had been brought to him with high fever and after examining the clinical symptoms manifest in the Patient and prescribing the required blood tests, including for Malaria, Complainants were immediately advised to take the Patient to OP-2, who was a medical specialist.

6. COUNSEL for OPs 2 and 3 contended that the finding of the State Commission holding them guilty of medical negligence on the ground that they did not conduct the required tests properly and give proper treatment is not borne out by the voluminous evidence, including the case history of the Patient, which is on record. A perusal of this evidence clearly indicates that right from 04.10.1997 when OP-2 first examined the Patient and after preliminary examination and tests advised admission on the next day in OP-3/Hospital, a number of diagnostic tests were conducted to check the hematological and biochemistry parameters of the Patient. These tests included TLC, DLC, Platelet Counts, Bilurubin, Cholestrol

etc. In this connection, even though an earlier blood test report which the Patient had brought indicated that she was negative for Malaria, she was tested for Malaria Parasite 3 times during her brief stay of less than 3 days in OP-3/ Hospital. This was specifically done to rule out Malaria since it is common that often the Malaria Parasite is not confirmed by one blood test and particularly if a patient has taken Chloroquine. It was only after the blood tests indicated that platelet counts were very low and Bilurubin was high and an ultrasound of the abdomen indicated that there were some signs of infective hepatitis that the OP-4 stated treatment for hepatitis. As is well documented the symptoms for Malaria are not peculiar to it and are often found in other viral infections as well, including viral hepatitis, enteric fever etc. It was further contended that as a matter of abundant caution on the 3rd day, OP-4 called a Specialist Gastroenterologist-Dr. Vivek Bhatia to see the Patient and on his advice to rule out Cerebral Malaria/encephalopathy the Patient was without delay referred to OP-5/Hospital. It was also pointed out that even in that hospital the blood tests conducted on the Patient indicated that she was negative for Malaria Parasite and Cerebral Malaria was detected only after a series of 6 blood tests. Looking at the above facts and as detailed in the case history of the Patient a large number of investigations were conducted including specifically in respect of Malaria and, therefore, the State Commission ''s finding that the OPs 2 and 3 were negligent in not properly conducting the tests and not giving the proper treatment is not borne out by the evidence on record.

7. COUNSEL for OPs 4 and 5 contended that the State Commission has rightly exonerated them of any medical negligence and deficiency in service. The Patient had remained with them for only one day in OP-5/Hospital during which time OP-4 got conducted a series of tests on the Patient, as a result of which diagnosis for Cerebral Malaria was confirmed and the life-saving drug of choice i.e. Mefloquine was immediately administered. The fact that the Patient died because the disease was at an advanced stage cannot be attributed to any medical negligence or deficiency in service on the part of OPs 4 and 5.

8. COUNSEL for the Complainants in his oral submissions challenged the above contentions and stated that the clinical symptoms with which the Patient had reported were clearly indicative of Malaria especially she was suffering from very high fever. He brought to our attention a notification of the Government of India issued in 1995 wherein it was clearly advised that to reduce morbidity and mortality in Patients reporting with high temperature, headache etc., presumptive treatment for Malaria must be given. In the instant case, the Patient had reported with all the clinical symptoms clearly indicative of Malaria and particularly because she had come from Mangalore, which is a coastal area where Malaria is endemic, treatment for the same should have been given. It was further contended that it is well known that initially blood tests may be negative for Malaria in a Patient having Malaria and, therefore, a series of blood tests should have been done consecutively as was done in OP-5/Hospital, which the OPs 2 and 3 failed to do. Further, as per medical literature on the subject to

rule out Malaria particularly Falciparum Malaria (Cerebral Malaria) a bone marrow test is also necessary, which was not done in the instant case. The fact that the Patient died of Cerebral Malaria is confirmed in the death certificate and, therefore, OPs were clearly guilty of medical negligence and deficiency in service in not correctly diagnosing the Patient ''s illness and giving treatment for the same. Had proper treatment for Malaria been given from the time of admission based on a correct diagnosis or if the Patient had been immediately referred to OP-5/Hospital, then her life could have been saved. The State Commission while concluding that there was medical negligence in the treatment of the Patient because of which she could not be saved, erred in granting only a token compensation to the Complainants for the irreparable loss caused to them due to the death of their daughter who was a promising B.Sc. student. We have heard learned Counsel for the parties and have carefully considered the evidence on record. So far as OPs 1, 4 and 5 are concerned, we agree with the finding of the State Commission that they were not guilty of medical negligence for the reasons recorded in the order of the State Commission, namely, these OPs had examined the Patient on only one day each and during this short period the required tests and medication was administered to her.

9. SO far as OPs 2 and 3 are concerned, the State Commission has found them guilty of medical negligence in not correctly diagnosing that the Patient had Malaria and giving her treatment for the same instead of treatment for viral hepatitis, which she did not have. After going through the case history and the medical records filed in evidence, we are unable to support this finding of the State Commission. We note that right from 04.10.1997 when the Patient was seen by OP-2, he got blood tests conducted to rule out Malaria and on the next day referred her to OP-3 where again a battery of hematological and biochemistry tests were conducted to check the Patient ''s TLC, DLC, ESR, Platelet Counts, Blood Urea, Sugar, Bilurubin, Cholestrol etc. Most importantly, even though Patient had brought an earlier blood test report done on the advice of OP-1 which showed that it was negative for Malaria, Typhoid etc., OP-2 again got blood tests conducted on 3 consecutive occasions from 5th to 7th of October, 1997 to check whether she had Malaria. On all 3 occasions the results of the blood tests clearly indicated that the blood was negative for the Malaria Parasite. Since it is medically well established that most of the clinical and diagnostic symptoms of Malaria are similar to those for other viral infections* (Source : (i) Malaria Vector Research Centre - www.killmosquito.org; (ii) Pathogenesis of Malaria and Clinically Similar Conditions - www.ncbi.nlm.nih.gov, July 2004, Ian A. Clark; (iii) Malaria - Medical Microbiology - NCBI Bookshelf - www.ncbi.nlm.nih.gov) and the ultrasound report also indicated that the Patient may be having viral hepatitis apart from the high Bilurubin and low platelet counts indicated in the blood tests, OPs 2 and 3 cannot be faulted for having concluded that the Patient had viral hepatitis rather than Malaria; this was the indication both as per the clinical symptoms and the diagnostic tests as discussed above.

10. COUNSEL for the Complainants has contended that since the Patient had come from a Malaria endemic area (Karnataka), as per the Government of India 1995 notification presumptive treatment for Malaria should be given. We have perused this notification and we note that Karnataka was not included as one of the Malaria endemic State. What constitutes medical negligence is now well established through a number of judgments of this Commission as also of the Hon ''ble Supreme Court. Based on the touchstone of the Bolam ''s test, one of the principles is that whether the doctor adopted the practice (of clinical observation diagnosis - including diagnostic tests and treatment) in the case that would be adopted by such a doctor of ordinary skill in accord with (at least) one of the responsible bodies of opinion of professional practitioners in the field. Looking at the facts in the instant case, it is evident that OP-2, who is a well-qualified medical specialist, had taken due care in respect of both the clinical observation and diagnostic tests in the treatment of the Patient as per his best professional knowledge and skills. Unfortunately, because of the nature of the illness (Falciparum Malaria) which is often not detected till an advanced stage through blood tests, the Patient could not be saved. However, this unfortunate death cannot be attributed to any medical negligence on the part of OPs. We are, therefore, unable to sustain this finding of the State Commission.

11. WE , therefore, set aside the order of the State Commission and allow the First Appeal No. 72 of 2008. First Appeal No. 65 of 2008 stands dismissed. No costs.

