

(2013) 05 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Goyal Hospital And Research Centre Pvt. Ltd , Dr. Anand
Goyal C/O Goyal Hospital , Dr. Sharda Mathur, R/O Happy
Home

APPELLANT

Vs

Kishan Gopal Shukla , Rajiv Sharma S/O S.S. Sharma

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 336 : 2013 2 CPJ 708

Hon'ble Judges : S.M.Kantakar J.

Advocate : SUSHIL KUMAR GUPTA , MANISH KUMAR

Judgement

1. THIS Revision Petition has been filed by the Goyal Hospital and Research Centre Pvt. Ltd and its doctors Dr.Anand Goyal, Dr.Sharda Mathur and Dr.Shoba Parikh as Petitioners challenging the Impugned Order passed by State Consumer Redressal Commission, Circuit Bench, Jodhpur, Rajasthan,(in short State Commission) order dated 04/07/2011 in which State Commission upheld the Order of District Forum and further enhanced the compensation from 3,77,000/- to 6,82,000/-. Facts in brief Facts of the Complainants: Smt. Vibha Sharma (Vibha) wife of Complainant no. 2 Mr Raju Sharma, consulted Dr. Kailash Dubey on 11.02.1999 for her health problems who diagnosed her as volvular disease of the heart and advised her for further checkup from some Cardiologist. Accordingly, on 12.02.1999 complainant took his wife to, as per complainant, Dr. Anand Goyal (OP-2), who claimed himself a Cardiologist, conducted tests pertaining to heart problems on Vibha Sharma and diagnosed as Mitral Stenosis with Mitral Regurgitation (MS with MR) and started treatment. Meanwhile, Vibha became pregnant kept visiting regularly to Goyal Hospital for her pregnancy checkup with Dr. Sharada Mathur (OP-3) and for heart problems check up with Dr.Goyal (OP-2) till her 8 months of pregnancy i.e. till October 1999.During this period there was no improvement in the health of Vibha. During the course of the treatment, she was admitted twice to Goyal Hospital from 25 - 27/8/1999 and 21-23/10/1999 for minor complainants. During 8th month of pregnancy on 27/10/1999 Vibha visited the Goyal Hospital and the OP-3 referred her to Dr.

R.K. Vyas, a Cardiologist for opinion. Dr.R.K.Vyas who on examination advised urgent hospitalization and further undergo delivery operation at the earliest. On same day by evening at about 5 pm OP-3 performed caesarian operation of Vibha and delivered a male baby. After delivery, Vibha 's condition deteriorated and landed in to coma and shifted to ICCU after four hours and on the next morning, she was declared dead on 28/10/1999. It is also stated that after delivery no relatives of Vibha were allowed to meet her. Facts of Respondents:- 1) Dr. Anand Goyal (OP-2) denied the allegations of complainants that he was not competent Cardiologist to treat heart ailments. He has not denied the fact that "Consultant Physician and Cardiologist " printed on his prescription slip. As per him, he gave proper treatment for heart ailment of Smt. Vibha and did not commit any negligence. OP-3 contended that she treated Vibha only for her pregnancy and she had no concern with the heart ailment as well as role of anesthesia. As per OP-3 she has given correct and proper treatment to Vibha for pregnancy and time to time referred her to OP-2 for treatment of her heart ailment. Whatsoever and when on 27.10.99 as per the advice of Dr. R.K. Vyas, Cardiologist, her caesarian operation was conducted that time also he had not committed any negligence. As per him, Dr. R. K. Vyas himself was present during operation. As per him, no negligence was committed during the operation. He also contended that pre-anesthetic test of Vibha was done and before operation, her hemoglobin was also fully known. After operation, Smt. Vibha Sharma regained consciousness. As per OP-1, no one of them commit any negligence and whatever services required to be provided in view of illness of Smt. Vibha, no deficiency therein and prayed for dismissal of complaint. 2. Aggrieved by the death of Vibha complaint No.496/2005 was filed in District Forum (DF),Jodhapur alleging medical negligence of the OP No. 1 and other treating doctors. The DF vide it 's order dated 1/9/2006 held the Opposite parties guilty of medical negligence the parties and directed OPs to pay Rs. 3, 77,000/- . 3. Aggrieved by the order of District Forum both the parties filed appeals before State Commission. The petitioners herein preferred to file an appeal No.267/2007 while respondents/complainants filed an Appeal No. 94/2006 for an enhancement of award amount. 4. During the arguments before State Commission objections OPs raised objections as below:

"that this complaint is not sustainable because the complainant no. 1 is father of Vibha Sharma. Vibha Sharma was married, hence, he has no right to file this complaint. This objection in our opinion is not liable to be allowed. The entire proceedings before the Distt. Forum and this Commission are conducted as a summary proceeding. Father of Vibha Sharma was with her during her treatment right from the beginning and filing of complaint by him and complainant no. 2 who is her husband cannot be said to be wrong. This objection was also correctly rejected by Distt. Forum. The other objection of Opposite parties was that a criminal case in this matter was also filed in the court of Chief Judicial Magistrate which was dismissed. In our opinion, dismissal of criminal case does not put any bar in filing complaint for compensation before the Consumer Forum ".

2. THE State Commission considering the evidence on record, the entire patient history and test reports concluded as follows: "The allegation of medical negligence leveled by the complainants has been proved. We have discussed this in detail herein above. In brief, we would like to say that there is no direct proof available regarding treatment of heart related disease as these facts that what Line of Treatment was given, what medicines were prescribed are not available. Why patient was not referred to Cardiologist for up to eight months, Dr. Goyal himself is not Cardiologist and he had not advised for abortion at the early stage, he was not available in the operation theatre during delivery option and nor any other cardiologist was called there. Whereas, it was the duty of Goyal Hospital to make available Cardiologist at the time of operation of patient suffering from such serious ailment. After the delivery option, not allowing relatives to go inside and meet also create doubts. Suddenly after four hours shifting Vibha Sharma to ICU and declaring her death next day in the morning. " The State Commission held respondents liable for deficiency in service and medical negligence. State Commission allowed another appeal No.94/2006 and granted enhancement of compensation. The State Commission by its common order dated 4/7/2011 disposed of both the appeals and rejected the appeal of petitioners and enhanced the compensation in favor of the complainants totaling Rs.6,82,000/-

3. HENCE , the present revision is before this Commission.

4. THE learned counsel appearing for both the parties made oral submissions and vehemently reiterated the submissions made by the two parties before the State Commission. I have carefully perused the entire material placed on record and the contentions of both the parties and also written arguments submitted by learned advocates appearing for both the parties. Several Medical texts, literature and authorities are referred. At the outset it is necessary to note the undisputed facts that; on 12/02/1999 Vibha (wife of C-2 and daughter of C-1) suffered difficulty in breathing and uneasiness and was taken to OP-1 and consulted OP-2. The consultation/ prescription slips and medical records (Annexure 1 to 22) maintained by the complainant and opposite party hospital amply establish that the patient was suffering from heart ailment as MS with MI. The OP-2 Dr. Anand Goyal who is post graduate- Doctor of Medicine (MD Gen Med) was not a Cardiologist who examined Vibha Sharma on 12/2/1999. After clinical assessment and proper investigations and by 2 D Echo study , the per Annexure 4,5 and 6 diagnosis in this case mentioned as "Early Pregnancy and MS with MR, Enlarged LA, Moderate Non Calcific Mitral Stenosis " and advised Doppler study. In simple words Vibha was in early pregnancy and suffering from the Heart Valve Disease. Accordingly, advised her for complete rest and avoid use of salt (Sodium). The OP-3 Dr.Sharada Mathur a Gynecologist of same hospital (OP-1) diagnosed her pregnancy of 2 months. Therefore, she was under treatment of OP 2 and 3. During follow treatment for her pregnancy, she visited Dr.Sharada Mathur (OP-3) on 8/5/1999, 14/6/1999, 15/7/1999 and 19/8/1999. During the follow up period on account of uneasiness Vibha was admitted for two days 25/8/1999 to 27/8/1999 and 21/10/1999 to 23/10/1999. The condition of

patient Vibha did not improve but deteriorated in spite of treatment of respondents.

5. ON 27/10/1999 the breathlessness and uneasiness increased she was taken to respondent 's hospital (OP-1). She was examined by Dr. Sharada Mathur who referred her to Dr.R.K.Vyas,a Cardiologist. The two prescriptions slips are marked as Annexure 20 and 21 (on page 314,316 and 318 of paper book). On the page 318 (Ex. 21), the letter head of Dr.R.K.Vyas dated 27/10/99 mentioned a diagnosis of Vibha as "RHD, Mod.Mitral Stenosis, Mitral Insufficiency with Atrial fibrillation, CCF " and mentioned the advise for "Hospitalization and plan for delivery by Caesarean as early as possible with explained risk during surgery ". Accordingly OP-3 conducted Cesarean Section operation and delivered male baby, after delivery patient went in to Coma, shifted to ICCU, but unfortunately died on next day morning of 28/10/1999. Now, under the given set of facts, I am required to determine as to whether there is medical negligence on the part of OP no- 2,3 and 4 in the diagnosis, follow up and treatment of young pregnant woman.

6. IT is also noteworthy that as already discussed supra, the OP 2 himself stated that he being holder of degree MD was competent to treat heart ailment and he has not denied the fact " Consultant Physician and Cardiologist " is printed on prescription slip. In his objections in para 2(9) specifically admitted that he did not consider any need for terminating the early pregnancy of Vibha seeing good condition of her health. Accordingly it becomes an admitted position that without having any such degree of specialization in heart disease he started treatment for heart disease (MS with MR) of Vibha from 12.2.99 and continued treating till her last breath on 28/10/1999. In my opinion the OP 2 and 3 committed deficiency in service by not proper referral and treated as a Cardiologist right from the beginning till prior to 27.10.99. In this connection it is very important to observe the evidence given by Dr. R. K. Vyas on 12/6/2006 which will throw light. Dr.R.K.Vyas is a Cardiologist qualified as having diploma in cardiology from Vienna City, Austria. Dr. R. K. Vyas has clearly stated that Dr. Anand Goyal was not a cardiologist. He in this context stated that "it is correct that any doctor even if he is simple M.D., cannot claim of being cardiologist i.e. Specialist in Heart Disease. " Dr. Anand Goyal properly got printed consultant physician as also cardiologist on his letter pad which he certainly was not competent and qualified to write this and he in this regard misled and created wrong position.

7. AS per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 dated 11th March, 2001, the duties and responsibilities of the physician have been notified. Clause-B Sub-clause 1.1.3 states as under: " No person other than a doctor having qualification recognized by Medical Council of India and registered with Medical Council Of India/State Medical Council(s) is allowed to practice Modern System of Medicine or Surgery. " Similarly, Clause B-1.2.1 states as under: " the physician should practice methods healing founded on scientific basis and should not associate professionally with anyone who

violates this principle. " Even otherwise, undergoing several trainings, attending workshops in Cardiology did not confer qualification of ardiologist. Hence it is not recognized by MCI or Rajasthan State Medical Council. OP 2 submitted that on 25/3/1999 Vibha was patient of Mitral Stenosis with Mitral Regurgitation Garde I disease which is not safe to do Medical Termination of Pregnancy (MTP). But in this regard Dr. R. K. Vyas in his statement on oath stated that " keeping in view the disease of Vibha and treatment in this regard and entire condition; it was the safest course for her to get her M.T.P. performed on 25.3.99 itself i.e. at her early pregnancy stage itself. " The Annexure 6 denotes Vibha was in early pregnancy. Dr R.K.Vyas further submitted that it would have been the safest course to get her M.T.P. done because the risk to the life of patient increases with the duration of pregnancy stage increasing. Therefore, it is crystal clear that the OP 2 was well aware and he anticipated the complications of MS/MI during pregnancy who ought to have advised MTP in early pregnancy or would have been referred to Cardiologist for proper management By not doing so, it can be said that there is a Medical negligence on the part of the OP-2. It is pertinent to note here that the follow up prescriptions slips of Vibha cleanly disclose that the OP-3 a Gynecologist who was also have not prudently thought of taking opinion of Cardiologist in early pregnancy of VIBha. or she whould have prudent enough to advise for termination of pregnancy(MTP). Dr. Anand Goyal in his reply and affidavit has not stated anywhere that he himself was present at that time in the operation theatre. He though has stated that he was present in the hospital. To arrive a conclusion in this case; I have referred Hon "ble Apex Court "s rulings , the MCI Regulations 2002 and medical texts and scientific journals, articles;

8. I may now refer the Medical background on the points relevant to this case: To enrich myself regarding treatment aspects of such patients of Pregnancy with Mitral Stenosis; I have referred several medical texts, research articles, and references like i) A review article "Mitral Stenosis and pregnancy: Current concepts in anaesthetic practice " cited in Indian Journal of Anaesthesia 2010;54:439-444; ii) "Management of Cardiac Disease in Pregnancy " cited in journal Continuing Education in Anesthesia,Critical Care and Pain Vol 9 ,2,2009 iii) "Mitral Stenosis before,during and after pregnancy " cited in Iranian Cardiovascular Research Journal Vol 1,No 1,2007,2. These three articles elaborately discussed about the care, management and also role of anesthetist in such patients. Some of important text is as stated below: · Disease and complications: The Mitral Stenosis is most common cardiac valvular problem in pregnant women with rheumatic heart disease (RHD) being most important cause.As a result of hemodynamic changes associated with pregnancy,previously asymptomatic patients develops symptoms or complications during pregnancy.If the symtoms persists despite optimal medical treatment invasive treatment shold be considered like per cutaneous mitral volvulotomy(PMV). The patients with MS should ideally be evaluated before pregnancy. Maternal (pregnant) cardiac complications, such as pulmonary oedema and arrhythmias, occurred in 35% of the pregnancies. The incidence of maternal cardiac complications correlates with

the severity of the mitral stenosis (67% for severe, 38% for moderate and 26% for mild disease). · Regarding the Surgical management- If mitral stenosis is diagnosed before pregnancy, percutaneous mitral Commissurotomy (PMC) is preferred. During pregnancy, the second trimester is the preferred period for any invasive procedure. Percutaneous mitral Valvuloplasty (PMV) provides palliation for pregnant women with mitral stenosis, and the reported success rate is nearly 100%. Successful balloon valvuloplasty increase the valve area to >1.5 cm² without a substantial increase in mitral regurgitation. Valve replacement is reserved for severe cases with calcified valve and in mural thrombus where the maternal mortality is 1.5-5% and the foetal loss is 16-33%. · Regarding Anesthesia in such patients: The role of the anesthetist is important by providing good labour analgesia. Most reports have recommended vaginal delivery under epidural anesthesia, unless obstetrically contraindicated. Caesarean section is indicated for obstetric reason only. Tachycardia, secondary to labour pain, increase flow across the mitral valve, producing sudden rises in left atrial pressure, leading to acute pulmonary oedema. This tachycardia is averted by epidural analgesia without significantly altering the patient hemodynamics. In a study by Goldszmidt and other, only 29-31 % of the 522 women with heart disease required caesarean section and nearly 70% of them underwent vaginal delivery under epidural analgesia. General anesthesia has the disadvantage of increased pulmonary arterial pressure and tachycardia during laryngoscopy and tracheal intubation. Moreover, the adverse effects of positive-pressure ventilation on the venous return may ultimately lead to cardiac failure.

I may now refer the Law on the points relevant to this case, as laid down by Hon "ble Apex court as what constitutes Medical Negligence? The judgment of Hon "ble Supreme Court in Malay Kumar Ganguly Vs Dr. Sukumar Mukharjee and ors, (2009) SSC 221,III (2009) CPJ 17(SC); wherein it has been observed as follows: "Even the matter of determining deficiency in medical service, it is now well settled that if representation is made by a doctor that he is a specialist and ultimately turns out that he is not, deficiency in medical services would be presumed. " Further the Hon "ble Supreme Court in Jacob Mathew V State of Punjab and Anr, (2005) 6 SSC 1= III (2005) CPJ 9 (SC) had concluded that, " a professional may be held liable on one of two findings : either he was not possessed of requisite skill which he professed to have possessed, or, he did not exercise reasonable competence in given case, the skill which he did possess. " Therefore the instant case is relevant in respect to OP-2 Dr.Anand Goyal, and in view of above facts, medical negligence per se is established. In the Bolam "s case (Bolam Vs. Frien Hospital Management Committee (1957) 1 WLR 582 it was also held that a doctor is not negligent if he is acting in accordance with standard practice merely because there is a body of opinion who would take a contrary view. (i) Whether the doctor in question possessed the medical skills expected of an ordinary skilled practitioner in the field at that point of time; in this present case it is "NO " the Opposite party- 2 is qualified doctor but not a Cardiologist as per MCI regulations. (ii) 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. (iii) Whether the standards of skills/knowledge expected of the doctor, according to the said body of medical opinion, were of the time when the events leading to the allegation of medical negligence occurred and not of the time when the dispute was being adjudicated. My view on the points No (ii) and (iii) are " NO " as the Opposite Party No 2,3 and 4 did not adopt standard of practice in proper diagnosis, referral and further management.

9. APPLYING all the above principles in the instant case, I am convinced that there was a medical negligence - admittedly, the Opposite parties are qualified doctors but they have not used their best professional judgment and due care in treatment of complainant 's wife right from beginning.

10. THE State Commission has correctly pointed out the vital evidence and appreciated the preponderance of probability pointing to the negligence and deficiency in service of all the Opposite parties and fixed liability on the OP No 2. To summarize the findings in this case; It is clear that as per MCI norms OP-2 is not qualified to treat Smt. Vibha who was the patient suffering from valvular disease. It was a risky that a doctor who is not qualified and competent to do so which amount to therapeutic misadventure. There is no evidence which may show that the OPs have given proper treatment during course of pregnancy. The OP-2 if he is a Cardiologist should have performed intervention like Percutaneous Mitral Valvotomy(PMV) or Commisurotomy. But, on 27/10/1999 at the eleventh hour i.e. after the lapse of 8 months of pregnancy the OP 2 and 3 referred such critical patient Vibha to Dr.R.K.Vyas, a Cardiologist; this is not acceptable and not a standard of medical practice at all. I also observe here that some element of negligence by an anesthetist Dr. Shobha Pareek (OP-4). The patient Vibha was in CCF (Congestive Cardiac Failure) the standard and preferred practice to anesthesia spinal anesthesia. But, OP-4 administered General Anesthesia for Caesarian Section instead of better option of trying vaginal delivery with Combined spinal-epidural analgesia which would produces good analgesia without major hemodynamic changes. Therefore, I am of the firm view that there is medical negligence by all the opposite parties mainly OP No.2. All the dreams of the complainant about his deceased wife who was a teacher were shattered and the child is deprived of mother; it is due to the negligent act of Opposite Parties. Hence, his pain obviously cannot be compensated completely in terms of money.

11. THEREFORE , this revision petition is dismissed and confirm the order passed by State Commission. However, for the purpose of reducing his financial liability and in the interest of justice, I, further impose Rs. 1,00,000/-as punitive costs upon the petitioners for wasting the precious time of this commission and consumer fora below.

12. FURTHERMORE it is important to discuss that, this case on hand throws

ample light upon rampant unethical medical practices in India. It is most common in present days that nursing homes, hospitals provide facilities like diagnostic Laboratory, Radiology or Sonology units without a specialists like Radiologist, Pathologists. Such units are managed by unqualified or untrained staff. It appears that such doctors have erased the Hippocratic Oath from their mindset and more active in a business of profiteering by coercive methods and by creating false impression in the minds of patients at large. The Apex Court in various judgments has clearly observed that; unless the person hold a necessary qualification, should not perform job of the Specialist. I would like to set this as an advisory /direction to the statutory bodies like Medical Council of India (MCI) and Health Ministry to initiate steps to strike down such practices of medical professional who are posing as a specialist or mis- representing as a super specialist without any approved qualification by statute or controlling authority. In other words it is a "QUACKRY " that treating the patients in absence of valid degree. Such misleading display of qualifications or misrepresentation will harm the quality of health system in India. Subsequently the innocent patients are victimized financially and also lose their precious life. For such instances the entire medical fraternity cannot be branded as lacking in integrity or competence "because of some bad apples ". Copies of this order be sent to Medical Council of India (MCI) and Health Ministry for information. In view of the foregoing observations and discussions, I proceed to pass the following Order: The petitioners are directed to pay Rs.6, 82,000/- along with additional punitive cost of Rs.1,00,000/- out of which Rs. 50,000/- will go to the complainants/ respondents and Rs. 50000/- be deposited with Consumer Welfare Fund by way of demand draft in favor of "Pay and Accounts Officer, Ministry of Consumer Affairs ", payable at Delhi, Learned Registrar of this Commission shall see compliance of the order under Section 25 of the Consumer Protection Act, 1986. This order should be complied within a period of 45 days from today otherwise it will carry interest at the rate of 9% p.a. till its recovery. Copies of this order be sent to Medical Council of India and Health Ministry for information and necessary action.