(2010) 07 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

I Manimegalai — APPELLANT

Vs

STEEL AUTHORITY OF INDIA LTD — RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : 2010 4 CPJ 221

Hon'ble Judges : K.S.Gupta , R.K.Batta J.

Advocate : S.Nandkumar , Satish Kumar , Anjali Chauhan , Siddharth Yadav , Wasim Ashraf

Judgement

1. THIS Complaint has been filed by the wife of deceased P. Rangangam and their children. The deceased P. Rangangam was working in the office of opposite party Nos.1 and 2 from 2.2.1981 and was entitled for medical facilities under the conditions of service. The deceased had stomach pain on 17.6.1995 at 7 a.m. and he got himself admitted in the hospital of opposite party Nos.1, 2 at 10.10. a.m. The Complainant reached the hospital and found that hernia operation of the deceased had already begun without even informing the family members and without obtaining consent from any one of them. The deceased was in the operation theatre till 3 p.m., when he was declared dead. In the certificate issued by the Hospital authorities it was stated that the deceased had expired due to illness. According to the Complainant, the deceased died only because of excess anaesthesia given by opposite party No. 4 Dr. Vineeta Dwivedi. It was further stated that the excess anaesthesia cannot be given when the patient''s stomach was full which is fatal to life. The deceased had full stomach and anaesthesia given to him had adverse effect. The Hospital authority did not conduct post-mortem of the deceased. It is further submitted that there was no emergency warranting to conduct hernia operation which is otherwise minor ailment and can never lead to death. According to Complainant, death was caused due to negligence in handling the operation and the death had resulted only because of excess anaesthesia given by opposite party No. 4. The Complainant has given the salary statement to which the deceased would be entitled and has claimed total compensation of Rs. 40 lacs.

2. REPLY was filed by opposite party No. 1 wherein it was contended that the treatment given to the deceased was totally free of charge and the service rendered does not fall within the definition of service under Section 2(1)(o); that opposite party No. 1 runs a well equipped hospital for the benefit of its employees as a welfare measure and the employees and their dependents are provided totally free medical service as per service rules and the employees of the opposite party do not contribute for the same. On merits, it is contended that the deceased came to casualty where the medical officer examined him. The examination revealed swelling in umbilical area with pain. It was diagnosed that the deceased was suffering from Non Reducible Obstructed Para Umbilical Hernia. The deceased was admitted at about 8 a.m. when the then Chief Medical Officer had also examined him. The deceased was seen by Dr. Vineeta Dwivedi, Senior Medical Officer (Anaesthesia) and thereafter all routine medical investigations were carried out. The deceased had given his consent for surgery in the prescribed form. The medical condition of the deceased required emergency surgery and since Hospital surgeon was not available, Dr. C. Ganesan, a reputed freelance surgeon in Salem was immediately requisitioned for surgery. He had examined the deceased at 9.30 a.m. and the deceased was shifted to operation theatre. Under General Anaesthesia, Herniotomy and repair of abdominal wall were done in the surgery. The operation was over at about 10.30 a.m. and the patient recovered fully about 10.45 a.m. and he was responding to verbal commands and his reflexes and vital parameters were normal The patient was brought to recovery room. He developed Hypoxia and the patient was administered 100% oxygen and intermittent pressure ventilation was also given. The patient suffered cardiac arrest once but he was revived fully with immediate treatment. A reputed cardiologist from Salem town was immediately requisitioned to treat the patient. The cardiologist from Salem Town arrived and examined the patient. The patient suffered from cardiac arrest again and in spite of best efforts, the patient suffered third bout of cardiac arrest. Defibrillation was done by DC shock and medication was given. The deceased could not be revived after the third cardiac arrest and he was declared dead at about 3 p.m. It has also been stated in the reply that contents of stomach of the deceased were aspirated before the operation took place and the allegation of the Complainant that anaesthesia was administered to the patient when the stomach was full is false and denied. In reply, past history of the deceased having suffered from Para Umbical hernia in the year 1993-94 has been given. The Complainant was repeatedly advised to undergo surgery. It is further stated that the deceased was chronic smoker and there is distinct possibility that hypoxia suffered was due to compressed state of his lungs and his obese stature.

3. OPPOSITE party No. 4 Dr. Vineeta Dwivedi also filed affidavit in reply wherein it was pointed out that petitioner was chain smoker (30 cigarettes a day) was advised surgery of para umbilical hernia in 1993-94. The deceased had suffered attack, which in medical terms is commonly known as "Strangulated Hernia". If the same is not immediately operated, it can lead to gangrene of the bowel or

the intestines. During pre-anaesthetist check up it was found that patient was full stomach. However, he had been taken for emergency operation because of acute pain and he was administered Metoclopramide. This medicine is administered to those patients who are full stomach and who have to undergo surgery. This helps in cleaning the stomach and prevents vomiting. Routine tests were carried out which were normal. It was during pre-anaesthetist check up it was found that patient was excessive smoker. It has been proved by extensive research that during and after surgery, smokers may suffer from hypoxia, due to many reasons, which in normal terms is lack of oxygen. Since the patient was a chronic smoker, hence after operation pre-emptively the patient was put on oxygen support. In spite of the above precaution taken with the patent, he suffered from hypoxia between 11 a.m. to 12 noon. The deceased suffered from cardiac arrest. At that time, Dr. Jaipal, an expert external Cardiologist was rushed to the hospital to attend the patient. In fact, another anaesthetist namely Dr. Elango was also requested to be present to monitor the patient. Besides this, Dr. C. Ganesan was also present attending to the patient besides opposite party No. 4. At about 3 p.m. on the same day the deceased suffered another cardiac arrest and could not be revived in spite of steps taken and the patient expired. The deceased was diagnosed to be suffering from pulmonary plethora which is a state of poor lung compliance and he was advised to stop smoking way back in July 1990. It has been admitted that deceased was having full stomach. However, as per the practice and correct procedure, first Ryle''s Tube and suction of the stomach was carried out to reduce chances of aspiration of the stomach. In this manner, the stomach was practically emptied and only thereafter medication was administered upon the patient by opposite party No. 4.

4. AFFIDAVIT evidence was filed by the Complainant, wife of the deceased wherein it was reiterated that there was negligence in giving excess dose of anaesthesia while conducting minor hernia operation; that the employees of opposite party No. 1 are entitled to medical treatment as per condition of service; that excess anaesthesia cannot be given to the patient when stomach is full. Reliance was placed on the death certificate where it was stated that deceased died due to illness whereas in fact the deceased had died due to heart failure on account of excess anaesthesia given to him on full stomach. Affidavit evidence was filed on behalf of the opposite parties wherein the details as given in the reply have been reiterated.

5. ARGUMENTS were heard. Counsel for the Complainants had also filed written arguments. The allegations of the Complainants are as under: (i) That the deceased was entitled to medical treatment as per condition of service, (ii) No consent was obtained from the Complainants for the operation, (iii) That the deceased was having full stomach and excess anaesthesia was given on full stomach, which proved fatal even though hernia operation is a minor operation.

6. THE opposite party in their reply filed by opposite party No. 1 have admitted that it runs a well equipped hospital at Salem for the benefit of its employees as

a welfare measure and the employees are provided medical facilities free of cost as per service rules. This clearly shows that treatment is given to the employees of opposite party No. 1 as per service rules/service conditions.

7. IN Indian Medical Association v. V.P. Shantha and Others, III (1995) CPJ 1 (SC), the Apex Court has laid down: "Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/ nursing home would not be free of charge and would constitute ''service'' under Section 2(1)(o) of the Act."

8. IN view of this, preliminary objections raised by the Opposite Parties is without any merit.

9. INSOFAR as written consent for conducting operation is concerned, the opposite parties have produced the consent letter which is at page-50 of the record. The consent has been given by the deceased himself and as such there is no merit in the contention of the Complainants that due consent was not taken before carrying out the operation.

10. COMING to the merits of the matter, the allegation is that the deceased had full stomach and excessive dose of anaesthesia was given on full stomach which had adverse effects and the same proved to be fatal. The case of the opposite parties is that the deceased was suffering from Non-Reducible Obstructed Para Umbilical Hernia which is life threatening when it becomes obstructed and the operation had to be carried out in order to save the life of the patient. The opposite parties have also stated that the deceased was suffering from Para Umbical hernia in the year 1993-94 and was advised to undergo surgery. According to the Opposite Parties, all necessary investigations were carried out and reputed freelancer Dr. C. Ganesan was called for surgery. Treatment record was filed by Hospital which shows that operation was performed from 9.30 a.m. to 10.30 a.m. and the operation was carried out by Dr. C. Ganesan. The said record further shows that the case was discussed with physician and since the patient had to be taken in an emergency measure, the risk of being a chronic smoker was explained to him. The record also shows that pre-operative record of the deceased indicated that the deceased was smoking 30 cigarettes a day. The record further shows that the patient was full stomach and the following procedure was followed:- "Details : Patient is full stomach. Inj. Perinorm 1 amp IV. Ryle''s tube aspiration of stomach contents done. Then Preoxygenation with 100% oxygen given for 5 minutes. Inj. Fortwin 15mg IV given. IPPV done. Endotracheal intubatioin done with 8.5 mm I. d. endotracheal tube with cuff inflated. Mentioned on 02+N20+Vecuronium Bromide 6mg+1mg+1mg(8mg)+halothane 0.5% on controlled ventilation. Reversal given with Neostigmine 2.5mg+Glycopyrolate 0.4mg IV. Extubation done. Reflexes++, Responding to verbal command. Position Duration of Anaesthesia Duration of Surgery Supine 1 hour 15 minutes (9.30 a.m. -10.45 a.m.) 1 hour (9.30 a.m. -

10.30 a.m.)"

11. THE operation notes show that the patient had fully recovered by 10.45 a.m. THE details of the operation notes are as under "Date Operation Notes: 17.6.1995 Operation started at 9.30 a.m. and over at 10.45 a.m. After the operation the patient recovered fully at 10.45 a.m. Post BP 130/90 mms of Hg, Pulse 88/min, patient responding to verbal commands. Reflexes++. 11 a.m. after shifting the patient, the patient developed hypoxia in the recovery room. Immediately patient was intubated and given 100% oxygen with intermittent positive pressure ventilation then patient''s vital parameter were maintained. In between once patient went into cardiac arrest then revived fully with Intra-Cardiac Adrenaline 1ml. THEn the BP went upto 150/100. THEn IPPV and other parameter were under control. THE patient then developed basal crepts and patient went acute pulmonary oedema. After the cardiac arrest and revival patient developed oliguria so inj. Lesix 60mg IV given and IV Manitol 20% 350 ml given. Inj. Efcorline 300 mg given, Inj. NaHCO3 50 ml given. After this the patient started having all the reflexes. THEn Dr. Elango and Dr. Joypal were called. THE patient was suffering from basal crepts and IPPV was maintained. THEn 3 p.m. (after 4 hour) the patient developed cardiac arrest once again. THE following treatment was given-External cardiac massage given. Inj. Adrenaline Intracardiac ml. Inj. Calcium Gluconate 20ml slow IV. Inj. Atropine 2ml IV THEn DC shock was given. Inj. Xylocard 5ml IV given. Inj. NaHCO3 given 50ml IV stat Inj. Efcorline 100mg given. IPPV was continued with 100%O. THE patient still not recovered from Cardiac-Respiratory arrest in spite of all resuscitative efforts. THE patient could not be received from Cardiac respiratory arrest at 3 pm."

12. THE treatment record thus goes to show that even though the deceased had full stomach, due and proper procedure was followed for the purpose of carrying out emergency operation. THE condition of complainant that excess anaesthesia was given on full stomach is thus not correct. It cannot be said that hypoxia developed on account of anaesthesia having been given on full stomach. Hypoxia can develop due to various reasons. However, there is no material on record to come to the conclusion that either excessive anaesthesia was given or it was given on full stomach. Due procedure for aspiration or empting stomach was carried out before the operation. THE Complainants have not been able to prove that due and proper procedure was not followed by opposite party No. 4 Dr. Vineeta Dwivedi.

13. IN the case of Jacob Mathew v. State of Punjab, III (2005) CPJ 9 (SC)=VI (2005) SLT 1=122 (2005) DLT 83 (SC)=III (2005) CCR 9 (SC)=2005 (6) SCC 1, the Apex Court has noticed as under: "Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct for human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary

care and skill by which neglect the plaintiff has suffered injury to his person or property...the definition involves three constituents of negligence (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining of the former''s conduct within the scope of the duty; (2) breach of the said duty and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for damage is a necessary ingredient of this tort."

14. WITH regard to the professional negligence, it is now well settled that a professional may be held liable for negligence if he was not possessed of the requisite skill which he professed to have possessed or, he did not exercise, with reasonable competence in the given case the skill which he did possess. It is equally well settled that the standard to be applied for judging whether the person charged has been negligent or not; would be that of an ordinary person exercising skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

15. IN Jacob Mathew as well as martin F. D.''Souza, the Apex Court quoted with the approval the opinion of J. Mac Nair, J. Bolam v. Friern Hospital Management Committee, 1957 (1) WLR 582, as under: ".... where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill, it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

16. IN the light of the material on record, and law on the subject, we are of the opinion that complainants have failed to make out a case of medical negligence on the part of the opposite parties and as such the complaint is dismissed with no order as to costs. Complaint dismissed.

