

(2007) 08 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

INDRANI BHATTACHARJEE

APPELLANT

Vs

CHIEF MEDICAL OFFICER, FARAKKA SUPER THERMAL POWER
PROJECT

RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Citation : 2007 0 NCDRC 75 : 2007 3 CPJ 354 : 2009 2 COMPLJ 461

Hon'ble Judges : M.B.SHAH , S.N.KAPOOR J.

Final Decision : Petition stands disposed of

Judgement

1. WE have heard this matter repeatedly. Finally time was granted to the learned counsel for both sides for filing written submissions. However, learned counsel appearing on behalf of the Complainant stated that written submissions which were filed earlier may be taken into consideration. Learned counsel for the Opposite Parties has not filed any further written submissions despite time being granted.

2. IT is the say of the complainant that her husband, late Chinmoy Bhattacharjee, was a qualified Electrical Engineer in the service of Farakka Super Thermal Power Project under National Thermal Power Corporation (NTPC). At the relevant time, the deceased was designated as Manager (Electronic Data Processing) Farakka Super Thermal Power Project and was residing in his official quarter provided by the Corporation. On 30.1.1995 at about 10 A.M., the deceased fell ill and, was treated by Opp.Party No.2, Dr.S.R. Deb, the Assistant Chief Medical Officer, who diagnosed the disease as "Mild Lateral Wall Eschaemia" and the same was recorded in the Employee's Medical Book. It is contended that despite the Complainant being checked up by Opp.Party No.2, the Opp.Party No.2 neither paid any attention to the pain suffered by the deceased nor referred him to a Specialist in Cardiology or any other doctor/specialist for the treatment of the pain and discomfort suffered by the deceased. Thereafter, on the fateful night of 14/15.12.1995 at about 1.00 A.M., the deceased, who was in his quarter along with the complainant and his child, complained of severe chest pain and

was sweating profusely. It is contended that the complainant telephoned Opp.Party No.2 and explained the serious condition of the deceased for medical help. Finally, the hospital authorities sent an ambulance van which was neither equipped with oxygen cylinder and stretcher nor was it accompanied by any doctor. Only one security guard and a driver were sent with the ambulance. After reaching the Hospital at 1.50 am the husband of the complainant expired at 2.20 am. Hence, this complaint is filed on 13.09.1996 claiming, in all, compensation for a sum of Rs.60 lakhs for deficiency in service by the Opposite Parties.

3. It is the case of the Opp.parties that as the projects of the NTPC are established near the pit-heads in remote areas, employees are provided medical facilities free of cost by the NTPC in its own hospitals. It is pointed out that at the relevant time, there were approximately seven doctors. The NTPC has also established a separate hospital for the benefit of the employees who have been allotted accommodation in permanent township. That hospital is the main and larger hospital, which is well-equipped with all types of facilities of different speciality with relevant infrastructure. The husband of the complainant was allotted a residential accommodation in the permanent township. Opp.Party No.2, Dr.S.R.Deb, was posted at a hospital in temporary township and was also allotted accommodation in temporary township. The distance between the temporary and permanent township is about 8 to 9 Kms. The temporary township is situated near the Power Plant. It is pointed out that the deceased had consulted Dr.Deb only once and the deceased never took leave from his office on medical grounds.

4. It is contended that the deceased was not a consumer as defined under the Consumer Protection Act, 1986, because the NTPC was providing free medical service under the contract of service. In any case, there was no negligence on the part of Opp.Party No.2. It is further pointed out that the deceased visited the hospital situated at temporary township on 30.1.1995 and consulted Opp.Party No.2, Dr.Deb, who took personal care and examined the deceased. He was given necessary medical treatment for gastric problems. As an abundant precaution, ECG was taken as the Opp.Party No.2 suspected Mild Ischemic changes and advised the deceased to attend the OPD for further check-up, investigation and consultation after 7 days. The changes in the ECG were not so significant/abnormal, which would necessitate the recommendation of the patient (deceased) to a Specialist/Cardiologist or would require restricting the patient for use of stairs. Thereafter, the deceased never cared to consult the Specialist or the Physician, especially when in NTPC employees are free to go to any doctor including Specialists for which there is no need of reference. I. On the basis of the complaint and the written submissions, the first question that would require consideration is: whether the services rendered by the Opposite Parties could come within the purview of "service" as envisaged under Clause 2(1)(o) of the Consumer Protection Act?

In our view, this question does not require much consideration, as the medical treatment given in the hospital to the employees and his family members is part

of the conditions of service and that the hospital is being run by the employer, namely, the NTPC. The question is considered by the judgements rendered by the Apex Court in *Indian Medical Association Vs. V.P. Shantha and others* AIR 1996 SC 550 = (1996) 8 SCC 655; *Laxman Thamappa Kotgiri Vs. G.M. Central Railway and Ors.* (2007) 4 SCC 596; and *Kishore Lal Vs. Chairman, Employees State Insurance Corporation*, decided on 8.5.2007, (2007) 4 SCC 579; and *Jagdish Kumar Bajpai Vs. Union of India*, Revision Petition No. 570 of 2002 decided by this Commission on 20.10.2005. In the aforesaid judgments it is held that medical services provided by the employer, in the hospitals established for the benefit of its employees are part and parcel of service conditions, and, therefore, it is consideration for the services rendered or to be rendered by the employee.

5. HENCE , we hold that the Complainant is a "consumer, as defined in Section 2(1)(o) of the Act. II. Second question is - whether there was negligence and deficiency in service on the part of Opp.Party No.2 at the initial stage, i.e., on 30.1.1995 and 1.2.1995 in proper diagnosis/treatment and not referring the deceased to a cardiologist?

6. IN this regard, it is contended by the complainant that on 30.1.1995, the deceased visited Opp.Party No.2 for discomfort and heaviness in chest, sweating and pain. ECG showed "Mild Eschaemia changes on lateral wall" which was noted by the Opp.Party No.2. Despite this, Opp. Party No.2 did not advise the patient (deceased) to consult a Specialist/Cardiologist. On the contrary, medicines for gastric trouble were prescribed. This is nothing but deficiency in service on the part of Opp.Party No.2. Again, the deceased visited another doctor, Dr. A.B. Sinha, on 2.2.1995 for the same complaint. Dr.Sinha also examined the ECG report and asked the deceased to continue the same medicines as prescribed by Dr.Deb. Hence, there is failure on the part of the Hospital and the Doctors in not giving proper treatment for heart problem; and further that, wrong treatment was given for gastric trouble.

7. AS stated above on the basis of the ECG taken on 31st January, 1995 "Mild Eschaemia" was noticed. On this point, Dr. S.R. Deb, Opposite Party No.2 was asked a question during the cross-examination whether he had informed the deceased to consult Cardiologist. His reply is as under: "No. But I advised him verbally to consult Physician and Cardiologist". The aforesaid answer of Dr. Deb would clearly indicate that on the basis of the ECG, the deceased was required to be informed to consult a Cardiologist. Then the question would be: whether the stand taken by Dr. Deb that he had advised the deceased to consult a cardiologist / Physician orally, can be believed? In our view, normally a doctor is expected to write such advice in a medical book/prescription. Further, it is the allegation of the Opposite Parties that the deceased was a chain smoker and drinking heavily. If that was the position, and in case where the ECG was not found normal, it was the duty of the Doctor to advise him in writing to consult the Cardiologist as well as to reduce smoking and drinking.

8. FOR this, it would be worthwhile to refer to the relevant part in the cross-examination of Dr. Deb wherein he has stated that he (Dr. Deb) has not advised late Chinmoy Bhattacharjee in writing to go to a cardiologist, but advised him verbally to consult Physician and Cardiologist; though not exactly the Medical Ethics may permit to advise a patient verbally to go to a Cardiologist, but sometimes Doctors have to deviate from that by considering the position of the patient concerned; in spite of finding ischemic changes in the ECG, he did not refer the patient in writing to go to a cardiologist; and, he is not always duty bound to advise in writing; he is also "not always" duty bound to examine the past medical records in the Medical Book of a patient; as late Chinmoy Bhattacharjee was a close friend, he did not advise in writing; even the normal ECG report cannot rule out heart diseases; silent ischemic mainly occurs in diabetic patients, and patients do not feel any symptoms; it is correct that a patient with silent heart attack may go on his day-to-day business or normal work without understanding it; he had advised late Bhattacharjee to stop alcoholic drink and smoking at once and to go for further check up by physician/ Cardiologist, and that this statement which he has made in his affidavit is not false or an afterthought. From the aforesaid cross-examination it is clear that Dr. Deb had noted that the deceased was having heart problem, as the ECG revealed Ischemic changes. It can also be held that Dr. Deb was aware about the seriousness of the disease. In such case, in our view, it is not permissible for a Doctor to prescribe medicines for gastric trouble. Proper treatment ought to have been given for heart problem or in any case in the light of the revelation of ECG he ought to have advised the patient to consult a Cardiologist. Dr. Deb is also aware that even the normal ECG report cannot rule out heart disease. Dr. Deb also stated that he and the deceased were friends and knowing each other. Then in such case, it was his duty to suggest the deceased to reduce smoking and drinking and he ought to have enquired subsequently whether the patient had consulted the Cardiologist or had taken any treatment from the Cardiologist. That was not done, and, finally, as a result of the deficiency on the part of the Opposite Party No.2 in not advising the patient to consult a Physician/ Cardiologist, the patient received fatal massive heart attack and died.

9. FURTHER , independent doctor Prof. (Dr.) A.K. Chatterjee has filed affidavit in evidence, stating that: "I have examined the medical book of deceased Chinmoy Bhattacharjee and it appears from the record that Chinmoy Bhattacharjee was suffering from "Premature Ischamic Heart Disease".

That in my opinion, the person who is suffering from premature ischamic heart disease is serious one and this patient may lead to sudden death, if untreated. That the patient like Chinmoy Bhattacharjee should have been referred to Cardiologist for his opinion and treatment. That the medicines which had been given to Chinmoy Bhattacharjee were not meant for the treatment of cardiac patient and it further appears no antianginal medicine were given to late Chinmoy Bhattacharjee. That Chinmoy Bhattacharjee was neither referred to Cardiologist nor to a specialist and as such I can opine beyond length of doubt

that the patient Chinmoy Bhattacharjee died due to gross negligence on the part of the attending Doctor."

10. DR .Chatterjee, vide his further affidavit dated 6.3.2002 opined as under: "When a lateral wall ischemia is diagnosed in a male under 40 years of age it should be taken seriously because it is well known that "Premature Ischemic Heart Disease" is a serious condition and these persons are prone to "Sudden Cardiac Death". After the diagnosis of "lateral wall cardiac ischemic" he should have been referred to a Senior Cardiologist for his specialist opinion (expert opinion) and treatment. I understand that no antianginal medicines were given to this patient, nor was he referred to a specialist. There has been in my opinion gross negligence on the part of attending Doctor".

In the Cross-examination, Dr.A.K.Chatterjee, stated, inter alia, as under" "It is correct that sudden death can be due to other reasons other than heart attack; The area of my practice is cardiology (heart diseases); A person cannot be orally referred to a Specialist, by the Doctor; Ischaemic Heart Disease is diagnosed when it occurs below the age of 45 years and it is a serious condition. Usually it starts at the age of 50 years. It may start earlier also."

As stated above, once it is admitted by Dr.Deb that the deceased was advised verbally that he should consult physician/cardiologist, the same would clearly establish that Dr.Deb was of the opinion that the deceased was required to be treated for the heart problem. In such a situation, he had wrongly given the medicines for gastric trouble etc. and this itself is deficiency in service.

11. WITH regard to professional/medical care, in Jacob Mathew Vs. State of Punjab (2005) 6 SCC 1, the Apex Court observed as under: "Negligence by professionals "18. """".. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either 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. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession.. ""..". "Legal and ethical aspects of practice of medicine inter alia provides: ".2. Details about the duty to attend the patient- Once a Doctor accepts a patient, the Doctor-patient relationship gets established and the Doctor becomes duty bound to attend the patient as and when necessary. "" 4. Duties related to investigations " Wherever necessary, for proper diagnosis and to know the progress, the Doctor should not forget or hesitate to advise for investigations like X-ray examination, biopsy, etc. 5. Duty to give a proper prescription with clear instructions to the patient. The Doctor may or may

not give medicine to the patient. But, he must give him a prescription with proper instructions." With regard to written advice, the Apex Court reiterated the same in the case of Poonam Verma Vs. Ashwin Patel and Ors. AIR 1996 SC 2111, and observed as under: "He says that he had advised it orally. This cannot be believed as this statement is contrary to the usual code of conduct of medical practitioners."

12. IN view of the above discussion, we hold that the Opposite Party No.2 is deficient in rendering service by not referring the deceased to a Cardiologist. Next, it is contended that on 14/15.12.1995, after midnight, when the deceased was suffering from severe chest pain, in spite of repeated calls to the hospital and to Opposite Party No.2, there was considerable delay in sending the ambulance. The ambulance which was sent, did not contain any stretcher, oxygen cylinder, life saving medicines, doctors or para-medical staff etc. As against this, it is the say of the Opposite Parties that the Complainant is residing in Permanent Township and the Permanent Township Hospital is 100 meters away from her residence. The Temporary Township Hospital is around 8 to 9 kms. away from her residence. Instead of contacting the Permanent Township Hospital which is 100 mts. away from her residence, the Complainant wasted the valuable time in contacting the Temporary Township Hospital, whereat the Opposite Party No.2 was on night duty. Immediately on receipt of the phone call in the Permanent Township Hospital an ambulance was sent at the residence of the deceased along with a Security Guard available in the Hospital for helping the patient. The ambulance was equipped with a stretcher and the deceased was also brought on a stretcher to the ambulance. The Opposite Parties denied the contention of the Complainant that the ambulance was not equipped with stretcher.

13. THE Opposite Parties further submit that if the patient was not brought on stretcher to the ambulance with the assistant sent along with the ambulance, then there was no reason for the Complainant to follow in another car as she could have very easily joined the patient in the ambulance itself. The justification given by the Opposite Parties as to why the Oxygen cylinders or any Doctor was not sent along with the ambulance was, that the house of the Complainant was only 100 meters away from the hospital.

14. THE Opposite Parties also submitted that when the ambulance leaves the hospital, the gate of the hospital is kept open by the guard till such time the ambulance returns to the hospital, and hence, the contention of the Complainant that the gate was opened by the guard after a long time of knocking, is baseless. Considering the aforesaid averments made by the Opposite Parties it is apparent that there is no substance in the contention raised by the Complainant with regard to delay in sending the ambulance. As per the say of the Complainant, the husband of the Complainant felt severe chest pain around 1.00 AM, the patient was admitted in the hospital at 1.50 AM, which was at a distance of 100 meters away from the hospital. The contention of the Complainant is that she had

contacted Opposite Party No.2 who was at Temporary Township Hospital, who in turn informed the Permanent Township Hospital to send the ambulance. All this process had taken around 50 minutes. Had the Complainant contacted the Permanent Township Hospital for ambulance, valuable time would have been saved. However, with regard to deficiency in service in not referring the patient (deceased) specifically or advising him to contact the Cardiologist and giving him treatment for gastric trouble even after looking at the ECG which revealed "mild Ischemia", the Opposite Parties are required to pay compensation to the Complainant. However, it is to be stated that the deceased was holding a high post of Manager (Electronic Data Processing) and, therefore, he cannot be termed as an illiterate person, not knowing what the doctor had written in his medical book which was given to him. Had he taken care with regard to the medical problem being faced by him, he would have received some medical treatment. Secondly, there is nothing on record to show as to what had transpired and what treatment he had taken between 2nd February, 1995 and 14th December, 1995. Hence, this is contributory negligence on his part. Considering the deficiency in service on the part of the Opposite Parties and the contributory negligence on the part of the deceased, in our view, it is just and reasonable to award a compensation of Rs.5 lakhs to the Complainant.

15. IN the result, the complaint is allowed. The Opposite Parties are directed to pay a sum of Rs.5 lakhs (Rupees Five Lakhs) as compensation, jointly and severally, to the Complainant. The Original Petition stands disposed of accordingly. There shall be no order as to costs.