

(2024) 12 NCDRC CK 1249

In the National Consumer Disputes Redressal Commission

Case No : First Appeal No. 6 Of 2016

Jagadeesan Ranga Rajan (Alias J R Rajan)

APPELLANT

Vs

Dr. Anant E. Bagul & Anr

RESPONDENT

Date of Decision : 16-12-2024

Acts Referred:

Consumer Protection Act, 1986 — Section 19

Citation : (2024) 12 NCDRC CK 1249

Hon'ble Judges : Subhash Chandra, Presiding Member; Dr. Sadhna Shanker, Member

Bench : Division Bench

Advocate : Manoj V. Georg, K. M. Vignesh Ram, Chhahat Khanna, Uday B. Wavikar, Vikas Nautiyal, Dr. Anant E. Bagul

Final Decision : Partly Allowed

Judgement

Dr. Sadhna Shanker, Member

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 30.09.2015 of the State Commission in complaint no. 49 of 2013 whereby the complaint was dismissed.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainant') and the learned counsel for the respondents No. 1 and 2 (hereinafter referred to as the 'doctor' and the 'hospital', respectively) along with Dr. Anant E. Bagul, respondent no. 1 in person and perused the record, including inter alia the impugned order dated 30.09.2015 and the memorandum of appeal.

3. The brief facts of the case are that the complainant approached the doctor and the hospital for Illizarov surgery. The complainant alleged that on the advice and assurance given by the doctor and later by his assistant, namely, Dr. Prakash that the complainant would be able to walk normally, he agreed for a corrective surgery on his left leg which had been short by 1½ inches due to polio in his

childhood. It is further alleged that the doctor mentioned two surgeries (corrective surgery known as 'Triple Fusion' and joint surgery, Illizarov) and that they would be done on the same day and would take about 1½ hours. It is further alleged that on 10.11.2005, the complainant was admitted in the hospital and some blood tests, X-rays & ECG were carried out on that day. He was operated on 12.11.2005. It is further alleged that during the period of stay in the hospital i.e. from admission to discharge, a third surgery was performed on 17.11.2005 for a maximum possible stretch and removal of ring fixator. There was infection and cultural sensitivity test was done. It is further alleged that on 07.01.2006, the complainant was administered general anesthesia for cleaning the wound and was 'Nil by mouth'. The drips were given only at night. On 08.01.2006, a dressing was done after 11.00 p.m. It is alleged that the complainant requested the doctor to remove the plaster and show him the wound. The doctor told him that it was not possible as the plaster gave support to the bone that had been broken. On 09.01.2006 neither a single doctor visited the complainant whole day nor dressing was done. It is alleged that the lack of care and callousness was intolerable and the complainant informed the hospital staff that there was no special care. The complainant complained of a foul smell from the plaster several times but no heed was paid. In view of the negligent care at the hospital, on 11.01.2006, the complainant told the doctor that he wished to leave and that if he could be discharged at the earliest. The complainant was discharged on 11.01.2006 at 2.00 p.m. The complainant has contended that from 12.01.2006 onwards he was cared by Dr. Picha. On 21.01.2006 when Dr. Picha came to dress the wound, she uncovered a cotton piece which covered the toe and she spotted a few eggs. She said that it was not a good sign and there must be 'maggots' inside. She suggested the complainant to go to the doctor and hospital but when the complainant telephoned them, neither the doctor nor his Assistant Dr. Prakash was available. Therefore, at 6.00 p.m., the complainant went to M/s Yash Hospital and was attended to and checked by Dr. Hemant B. Agarwal, who found that the situation to be very bad with the wound covering almost 2/3 of the tibia and multiple maggots on the feet. Dr. Agarwal recommended the complainant to go to Dr. Hardikar Hospital in Pune as it was an emergency. Then on 21.01.2006 the complainant rushed to Dr. Hardikar Hospital in Pune and was admitted at 11.35 p.m. The complainant was informed that gangrene was spread almost to the knee and that it was virtually impossible to go in for an amputation below the knee, for fear of further infection on the leg. The complainant alleged that something untoward had happened during the surgery at hospital which caused the artery to be blocked or compromised the flow of blood, due to the spasm caused while attempting the required/desired stretch in the complainant's leg by the doctor. It is further alleged that the infection caused due to pseudomonas bacteria was neither informed nor contained / cured at hospital, which led to loss in blood circulation, lack of sensation, gangrene and maggots settling on the dead leg. It is further alleged that the post operation treatment care was far from efficient and proper and has resulted in the loss of the complainant's limb. Further, the investigation,

medical opinion following the amputation revealed the nature of 'pseudomonas bacteria'. This bacteria resides at hospital premises and is deadly, if not treated with care. It is further contended that he was never informed about the true nature and type of infection he had and was only told that it was a minor pin-tract infection, which can be cured in a couple of days. It is alleged that the complainant was not informed about the presence of pseudomonas bacteria. The complainant has contended that the doctor and the hospital were negligent and incompetent in curing the infection and Dr. Hardikar's statement in email dated 28.11.2006 states that the pulsoximater was not giving any signal regarding arterial flow whereas the Doppler Test confirmed absent blood flow. It is alleged that as per sound medical practice a Doppler test should have been done to ensure that there was no blockages in the veins/arteries, which was never done at the hospital and strong antibiotics were administered all along without undertaking a proper Doppler test to ensure that the medicine was actually reaching the site of wound. The complainant also contended that the consent was not an informed one.

4. Alleging deficiency in service on the part of the hospital and the doctor, the complainant has filed a complaint before the State Commission with the following prayer:

"(1) To hold and declare the Opponents guilty of deficiency in service, medical negligence and unfair trade practice as per the provisions of C.P.A. 1986

(2) To direct Opponents to pay to the complainant the sum of Rs.10,32,923/- claimed as amount already incurred towards treatment which includes the hospitalization, medication, accommodation, travel, food, vehicle, driver charges, consultations etc.

(3) To direct Opponents to pay to the complainant the sum of Rs.5,23,244/- claimed as Post amputation care amounts already incurred towards includes physiotherapy, prosthesis, visits to prosthetic centre, socket change, legal & misc. costs.

(4) To direct the Opponents to pay the Complainants the amounts to be incurred which is approximately around Rs. 49,11,833/- towards acquiring 2 C-legs, maintenance costs, ongoing physiotherapy charges and miscellaneous costs.

(5) To direct the Opponents to pay Rs. 5,00,000/- towards loss of pain, shock, suffering, discomfort, inconvenience, frustration, mental agony and harassment suffered by the complainant at the hands of the Opponents.

(6) To direct the Opponents to pay interest at the rate of 12% per annum on the amount of Award from the date of filing till realization.

(7) Such other and further relief as the nature and circumstances of the above number complaint may deem fit and proper and as specified in the Statement of Claim at pg. No. 31."

5. The doctor and hospital contested the case by filing written version stating that there was no deficiency in service on the part of the doctor and the hospital. It is further stated that the complainant took discharge on 11.01.2006 and again readmitted and during the period from discharge i.e. on 11.01.2006 to readmission, the complainant approached a doctor who was not an Orthopaedic Surgeon for dressing and other treatment. It was further stated that the proper treatment was given by the doctor and the hospital and at the time of discharge, the condition of the complainant was good. It is further submitted that after the discharge, the complainant has taken treatment such as dressing and medicines from the doctor who was not orthopaedic surgeon. It is also stated that the doctor and the hospital were not responsible for the infection and there was no deficiency in service on the part of the doctor and the hospital.

6. The State Commission, vide its order dated 30.09.2015, had dismissed the complaint.

7. Feeling aggrieved by the order dated 30.09.2015 of the State Commission, the complainant has filed the instant appeal before this Commission.

8. The main issue in this case is as to whether there was any deficiency in service on the part of the doctor and the hospital in providing treatment to the complainant.

9. Before us, it was argued by learned counsel for the complainant that contrary to the Indian Medical Association guidelines, the hospital had issued misleading advertisements that the operation would be done for lengthening his leg within 10 to 300 seconds with a minimum bisection and no bleeding. It was further argued that the complainant was a south Indian and the consent form was in Marathi on which his signatures were obtained and at the time of obtaining his signature it was not properly explained to the complainant about the actual risk and complications of the surgery. Further, it was argued that the hygienic condition in the hospital were deplorable as is evident from the fact that when the complainant was admitted despite hiring the A/C room, ENT had to be called to take out an insect from his ear.

It is further submitted that the first surgery was performed admittedly on 12.11.2005 and another surgery was admittedly done on 15.11.2005 i.e. three days after first surgery and in the second surgery, the external ring fixator was fixed on his leg instead of his plaster. On inquiry, the complainant learnt after the second surgery that his left leg had been broken in pieces, which had never been informed to him earlier.

It is contended that the Doppler test should have been performed at that stage to find out if the vein and arteries were intact on the operated leg. As per the complainant, a third surgery was performed on 17.11.2005, which is denied by the hospital. The complainant suffered pain, discomfort and numbness in his toes and also developed fever. A culture sensitivity test done on 24.11.2005 showed the presence of 'Pseudomonas sps.' which infection as alleged is acquired from

the hospital.

Thereafter, there was a discharge of pus from the wound site, and the complainant continued with high fever and chills and the complainant continuously complained of lack of sensation. It is further contended that the hospital did not conduct a Doppler test. The wound had continuous discharge, cleaning and debridement were done repeatedly. Thereafter, the complainant sought discharge but was readmitted on 12.12.2005 and cultural and sensitivity test was done again, which showed the presence of the same bacteria. After 10 days of stay in hospital, he again requested for discharge and as per the advice, he undertook daily dressing of the wound from Dr. K. Picha, who was the doctor in a neighbourhood of the complainant. She was constantly in touch with the hospital while doing the dressing. The complainant was readmitted in the hospital on 06.01.2006 as there was foul smell coming from the plaster and he was discharged on 10.01.2006. He then showed himself to Dr. Hemant Kumar Agarwal, an orthopaedic surgeon on 21.01.2006 and he found that there was maggots in the wound and was advised amputation, which subsequently was done.

10. The main grounds of medical negligence as alleged by the complainant are lack of informed consent prior to procedures and lack of reasonable degree of care post surgery by not doing Doppler test despite the complainant continuously complaining of lack of sensation in his toes and the wound needing frequent debridement and cleaning. It was argued that the complainant had approached the hospital on the basis of misleading advertisements and he had not gone for the treatment of his disease. In this case, no benefit of doubt can be given to the doctor and to the hospital because it was not a case where the doctor had to adopt a particular line of treatment at the spur of the movement in any emergency. It was further argued that the proper care and requisite tests that were reasonably required, were not conducted post-surgery keeping in view the complainant complaints and the status of the wound. In support of its contentions, learned counsel has placed reliance on the decisions in the case of *Samira Kohli vs. Dr. Prabha Manchanda and Anr.* (2008) 2 SCC 49 and *Krishna Mohan Bhattacharjee vs. Bombay Hospital Medical Research Centre and Ors.* II (2015) CPJ 509 (NC).

11. Learned counsel for the doctor and the hospital, on the other hand, relied on the findings of the State Commission that since there was a period of intermittent treatment by other doctors at various hospitals, the infection could have been acquired at any other place. It was further argued that pre, during and post operation, protocols followed were as per standard medical norms and the duration and line of treatment had been explained to the complainant. He further argued that Pin-tract infection of Ilizarov ring is a well known complication which can occur even after taking all aseptic precautions and the status of distal neuro-vascular complications were always checked by using an Oxymeter – which is a routine universal bedside method all over the world. The

Doppler Test is resorted to, only where advanced diagnostic checks are needed. It was further argued that there was no lack of standard protocol and care on the part of the doctor and the hospital and the State Commission's order is well-reasoned and should be sustained. In support of his contentions, he placed reliance on the following decisions:

Martin F. D'Souza vs. Mohd. Ishfaq II (2009) SLT 20

Jacob Mathews vs. State of Punjab and Anr. (2005) ACJ 1840

12. In the instant case, the State Commission has primarily dismissed the complaint on the ground that the complainant stood discharged on 24.11.2005 and thereafter visited and took treatment from Dr. Picha during the phases when he was out of the hospital and therefore, the infection could have been acquired during those periods. However, a perusal of the record shows that although the discharge certificate is dated 24.11.2005 but bed side tickets of the complainant which are not controverted run from 08.11.2005 to 09.12.2005. It is seen that the doctor and the hospital has mentioned in its written submission as regards the date of discharge certificate stating that "only thing is that the discharge card may have been filled up by the juniors and may have made documentary errors, but errors if any are purely unintentional." This clearly shows that date of discharge was not 24.11.2005 and was much later. It is also seen that culture sensitivity report done in the hospital is dated 24.11.2005. It is, thus, amply clear that the infection was present while the complainant was in the hospital and cannot be attributed to the treatment by any other doctor. It is clear that the hygienic condition in the hospital were not upto standard during the time the complainant was admitted as evidenced by the insect in his ear. Further, it is also clear that the complainant had acquired bacteria infection while he was in the hospital.

13. As regards the consent form as available on record signed on 10.11.2005, it is seen that it is in Marathi language and admittedly the complainant is not a Marathi speaking person. Although the name of the operation is mentioned in English but nothing else has been translated on the paper on which the signature is taken. Therefore, it is difficult to accept that this was an informed consent of the complainant.

14. It is further seen that the State Commission has not accepted the complainant's condition and contention that there was a third surgery on 17.1.2005 stating that there are no papers that support its contention. It is, however, seen from the record that the bill of Chetanya Hospital clearly mentions for 17.11.2005 operation theatre charges, surgeon charges and anaesthetic charges, which have admittedly been paid by the complainant. Therefore, from a perusal of these documents, it is clear that three surgeries were conducted in the case of the complainant. It is also seen from the bedside notes of the hospital that discharge from Pin tract site first appeared on 24.11.2005 and it has been subsequently noticed on 27.11.2005 and 30.11.2005. It is also seen that lack of

sensation and no finger movements have also been noted on 01.12.2005. On his re-admission also, on 12.12.2015, there is a reference to toe movement but it is not clear in the copy that has been supplied as to what it is.

15. From the examination of the bedside ticket, it is apparent that both the infection and the inability to move his toe and numbness were duly noted immediately post surgery by the doctors. Although he was put on antibiotics but no Doppler Test was done despite noticing the lack of movement in the operated limb.

16. In this regard, the opinion of one doctor, Dr. S. Pugalanthi Pandian, which is part of the record, can be looked into. It is pertinent to note that the opinion of Dr. S. Pugalanthi Pandian was rejected by the State Commission by quoting the arguments of the doctor and the hospital that the emails cannot be considered for the reasons that the opinion is based on record sent by complainant and that the infection was not caused because of the negligence of the doctor and the hospital but it was caused because the complainant after taking discharge from time to time took treatment from an unqualified doctor.

In part I of his email, Dr. S. S. Pugalanthi Pandian has stated as under:

"1) Mr. J. Rajan, after undergoing the limb lengthening procedure, probably had Ischaemia of the Limb. This is obvious from the symptoms your client had (numbness in the Limb and inability to move the toes). But no investigation had been done to ascertain the Vascularity like Doppler Flow Study etc. as per the records available."

17. It is clear from the said email that when a patient complains of numbness and lack of movement in limb, the Doppler Flow Study is recommended to the instant problem. In this case, from the record, it is clear that the complainant had been complaining of numbness and lack of movement and the same had also been noticed by the doctors of the hospital but no Doppler Flow Study or any other specific advance test was done to investigate the problem.

18. In view of the fact that the leg had been operated upon and immediately post-operative, the patient was complaining of numbness, advanced diagnostic tests were definitely required in the circumstances but the same was not done. It was also important to note that the anti-biotics were not working on the complainant and despite taking them for a long time, the culture test continuously showed the presence of the bacteria.

19. The law relating to what constitutes medical negligence has been laid down in the Hon'ble Supreme Court's judgment in Jacob Mathew Vs. State of Punjab & Anr., III 205 CPJ 9 (SC). It is based on the Bolam Test (1957) 2 A11 ER 118. The test for medical negligence is based on the deviation from normal medical practice and it has been held that establishment of negligence would involve consideration of issues regarding:

(1) state of knowledge by which standard of care is to be determined,

(2) standard of care in case of a charge of failure to (a) use some particular equipment, or (b) to take some precaution,

(3) enquiry to be made when alleged negligence is (a) due to an accident, or (b) due to an error of judgment in choice of a procedure or its execution. For negligence to be actionable it has been held that the professional either (1) professed to have the requisite skill which he did not possess, or (2) did not exercise, with reasonable competence, the skill which he did possess, the standard for this being the skill of an ordinary competent person exercising ordinary skill in the profession.

20. In a claim of medical negligence, it was essential to establish that the standard of care and skill was not that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. For negligence to be actionable, it was held that it has to be attributable and the three essential components of "duty", "breach" and "resulting damage" need to be met, i.e. (i) the existence of a duty to take care, which is owed by the defendant to the complainant; (ii) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and (iii) damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant.

21. In this case, from a detailed examination of the record, it is clear that the hospital was aware that the complainant had acquired a hospital induced infection during his stay in the hospital and he was complaining and was also noticed to have loss of sensation and movement in the operated leg during his first admission itself. In such a case, the complainant becomes a high risk patient and demands proper care and diagnostic tests in order to get relief. The findings of the State Commission that proper care was taken of the patient is not proved from the record and is not sustainable in the eye of law. It is not clear as to why the discharge summary is dated 24.11.2005, the date on which the first culture report came showing the presence of bacteria. The record clearly shows that the patient remained in the hospital till 09.12.2004. It is also unclear as to why the hospital is denying the third surgery conducted on 17.11.2005 when the bill for the same has been paid by the complainant. Also, it is not understandable as to how despite the patient coming to the hospital innumerable times and the wound being cleaned and debrided many times, the deterioration of the status of the leg, the start of maggots and the onset of gangrene was not diagnosed at the hospital. The hospital's plea that the infection was acquired elsewhere is clearly belied by the chronology which is part of the hospital record. As regards the date of discharge summary the 'error' of junior doctor is already accepted by the doctor and the hospital.

22. In the circumstances, in our view, during the stay of the complainant, the hospital had committed breach of duty of reasonable care that was required for the patient based on the reports and the observations of doctor during his first admission in the hospital. Coupled with the lack of informed consent as held

above, this constitutes negligence on the part of the doctor and the hospital.

23. Once the hospital is held to be negligence in this case, the quantum of compensation has to be decided. The compensation has to be restitutory in nature. It is seen that the complainant has claimed a total of 69,68,000/-, which includes costs of first surgery, post amputation care and future costs to maintain the prosthesis, physiotherapy etc.

24. Considering the fact that the incident is of the year 2005 and we are now in the end of 2024 and that the leg of the complainant had been amputated when he was about 37 years of age, thus, in the ends of justice, we are of the opinion that a lump-sum compensation of Rs. 50 lakh is just and reasonable.

25. In the result, the Order dated 30.09.2015 of the State Commission is set aside and the instant appeal is partly allowed. The respondents, doctor and the hospital, are directed to jointly and severally pay Rs. 50 lakh to the complainant within a period of eight weeks from today, failing which, it shall carry 9% interest per annum, till its realization. The Parties to bear their own costs.