(2006) 04 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

JAGRUT NAGRIK — APPELLANT

Vs

SHRI JALARAM HOSPITAL — RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Citation : 2006 3 CPJ 217

Hon'ble Judges : N.G.Nandi , Jatin P.Vaidya J.

Final Decision : Complaint Partly allowed

Judgement

1. THIS complaint is filed by Jagrut Nagrik- authorised representative of complainant Nos. 2, 3 and 4 against the opponent Nos. 1 to 5. Complainant No. 2 is the one who allegedly suffered. Complainant No. 3 is the father of complainant No. 2. Ms. Vandana, Complainant No. 4 is the mother of complainant No. 2.

2. IT is important to note that during the pendency of the case complainant No. 3 has died on 6.7.2001 and was deleted as party by order dated 13.2.2003. Complainant Nos. 1 and 4 have also stated that opponent No. 3 Dr. Milan Nane and opponent No. 4 Medical Superintendent, Mayo Hospital are formal parties and no allegations stand against them and complainants do not press any relief against them. Complainants state that complainant No. 2 is 19 years old who has studied up to standard 10th and now is in standard 11th with bright career working as a model in T.V. Ads. Opponent No. 1 is the hospital where complainant No. 2 took treatment, opponent No. is M.D., Gynec. and practising as a Gynaecologist, running her own nursing home in name of Navjivan Clinic at Baroda. Opponent No. 3 Dr. Nane is the surgeon who was to operate complainant No. 2. Opponent No. 4 is a hospital where complainant No. 2 received subsequent treatment. Complainant Nos. 3 and 4 took complainant No. 2 to opponent No. 1 Jalaram Hospital for repeated attacks of fever on 24.2.1994. Rs. 5 were paid as charge and receipt was given, she was examined by Dr. Milan Nane, opponent No. 3 and diagnoses of tonsilitis was made after examination. Ms. Vandana was advised surgery and date for operation was fixed on 19.3.1994.

On that day she was examined by Dr. Nane, blood sugar and urine test were done. She was admitted. Dr. Kavita Udwani was called by opponent No. 1, Jalaram Hospital. Complainant Nos. 3 and 4 in presence of one of their relatives had paid Rs. 250 to Dr. Udwani and Rs. 100 to opponent No. 1 as charges for anaesthesia and operation respectively.

Ms. Vandana was given anaesthesia by Dr. Kavita Udwani at 8.30 a.m. on 19.3.1994 in Jalaram hospital for operation of tonsillectomy by opponent No. 3 Dr. Nane. This was soon after admission to hospital. Whenever after 2 hours Vandana was not brought out of operation theatre the parents were concerned. They were told nothing. Cardiac arrest that had occurred came to be known to Dr. Udwani when operation was to start and that was quite late. This is because Dr. Udwani failed in her duty to monitor the patient during induction of anaesthesia. This is negligence of Dr. Nane and Dr. Udwani. Complainant Nos. 3 and 4 had heard the whispers that oxygen were not available in operation theatre when required but were in lock with Superintendent of hospital. The cardiac arrest, its late detection, late treatment led to insufficient oxygen to brain and permanent damage and disability to Vandana. Opponents did not have cardiac monitor or ventilator. They kept on trying to revive the patient till 4.30 p.m. and wasted time which they should not have as any reasonable doctor will do. The opponent should have transferred Vandana immediately where all monitors, etc. were available. There was faulty intubation and faulty oxygenation. That led to respiratory depression and cardiac arrest (P.6). Extubation was done prematurely which caused respiratory depression and cardiac arrest. That was avoidable by proper monitoring and oxygenation. Vandana should have been transferred without extubation. Dr. Kavita''s negligence and non-experience she did not detect the sudden cardiac arrest. Even after 8 hours, opponents did not give reply regarding condition of the patient or request by complainant Nos. 3 and 4 to transfer the patient to better place. Patient was transferred to ICCU Ward of Mayo Hospital at 7 p.m.

3. AS per history given by accompanying doctor, Vandana had developed sudden cardio respiratory arrest during induction of anaesthesia. She was revived but on mechanical ventilator. Marked subcutaneous emphysema was noted which was relieved partially by multiple puncture, left hemiparesis was noted. Vandana had regained consciousness after 1 hrs. She was extubated. She was drowsy with static vital signs. After 3 hours she again developed respiratory depression followed by cardiac arrest and then she was transferred to Mayo Hospital (Para 5.4, P 8). On admission to Mayo hospital she was deeply comatose without spontaneous ventilatory efforts. Heart rate was 180 min and her blood pressure was less than 60 m.m. systolic with dopamine drip. Both pupils were semi-dilated and sluggishly reacting to light (P. 9 Para 5.5). She had left hemiparesis. Absent deep reflexes, no vetilatory effort. She was on mechanical ventilator. She had extensive crepitations over chest, subcutaneous emplysema over chest, neck and face, soon after admission to Mayo Hospital she had cardiac arrest. That was revived. Intracardial adrenaline was given (Para 5.6). Chest X-ray had shown

bilateral fluffiness with subcutaneaus emplysema and pneumo mediastinum (Para 5.7). Treatment at Mayo Hospital is described in Para 5.8. Patient had planned tracheostomy on 26.3.1994 and was taken off the ventilator on 20th day (Para 5.9). She had left hemiparesis. Tracheostomy was closed on 12.4.1994. ACT scan brain had shown possibly Ischemic lesion on 15.4.1994. She was shifted to General Ward on 18.4.1994 and back to Jalaram Hospital on 27.4.1994. The opponent helped to settle the bills of Mayo hospital because they were finding themselves guilty and negligent (P. 11).

4. VANDANA was beautiful, intelligent, smart with good career and came out of hospital mentally retarded and other problems described in Para 5.12. Complainants have reiterated the summation of what is stated in the complaint in Para 6. The complainants state about jurisdiction and as per prayer para 8 ask compensation to the tune of Rs. 19,50,000, hold opponent Nos. 1, 2 and 3 jointly liable. The complaint is on affidavit. The complainants have produced the copies of documents from page 92 to page 127. Ms. Veena M. Valbhani, daughter of complainant No. 3 by application Ex. 28 dated 13.2.2003 has informed about death of complainant No. 3 and requested to delete complainant No. 3 from the complaint. The request was granted by order dated 13.2.2003 (P. 128). The opponents were duly served and have filed their written statements at Exh. 22, Exh. 25 by opponent No. 2 and opponent No. 1 respectively. An affidavit is also filed at Exh. 33 by Ms. Veenaben Valbhani, sister of complainant No. 2 and daughter of complainant Nos. 3 and 4 with copies of documents.

5. WRITTEN statement of opponent No. 1 filed by Dr. Pradip Pandya, Superintendent of Jalaram Hospital is on affidavit (Exh. 25) wherein it is stated that complainants have stated false and exaggerated facts to extract money. Opponent No. 1 is a Charitable Trust and has not charged the complainants for operation and hospital treatment and hence complainant is not a consumer and hence complaint is not maintainable.

6. IT is true that complainant No. 2 was admitted in Jalaram Hospital on 24.2.1994 and Rs. 5 were received as consultation charges. Vandanaben was advised tonsillectomy and was admitted on 19.3.1994. Dr. Kavita Udwani is qualified anaesthetist. IT is not true that hospital had no facility of cardiac monitor or ventilator (P. 64, Para 8). Opponent No. 1 describes the procedure in operation theatre (as noted in page 99 by opp. No. 2). IT is not true that alleged faulty intubation caused respiratory depression or cardiac arrest. Opponent No. 12 is insured and Insurance Company has to indemnify opponent No. 2 should such an order be passed. Insurance Company is necessary party and be so joined (P. 76). Opponent No. 1 has denied all other claims and contentions of complainants. Opponent No. 2 Dr. Kavita Udwani filed her writen statement by Exh. 22 wherein she states that the complaint is false and frivolous. There is no negligence or deficiency in service. Opponent has taken all reasonable care and given proper treatment. The opponent is qualified anaesthetist and not gynaecologist (certificate of proof is at Annex. 1 P. 49). Opponent No. 2 Dr.

Kavita Udwani took opinion and help of other specialists to manage the case of Vandana. That all facilities for such operations were available and used as and when required. These facts are borne out by case papers presented herein. Relatives of patient were kept fully informed and decision to shift Vandanaben was jointly taken and relatives taken into confidence. All other averments of the complainants are denied. Complaint is sought to be dismissed with cost of Rs. 10,000 for such false and frivolous complaint. The statement is on affidavit and has annexure (P. 49 to 53). Affidavit Exh. 33 is filed by Ms. Veenaben, sister of complainant No. 2 wherein it is stated that Ms. Vandana was intelligent, bright and active in extra-curricular activities. After surgery her condition is miserable with various problems described in para 3. For Vandana''s dependency and disability, certificates are produced, Annexure-III. She also narrates what is already stated in the complaint. We have perused the oral evidence. Witness of opponent No. 4 Laxmiben, who is one of the signatories to the complaint was cross-examined in presence of Court Commissioner and essentially stares the same thing stated in the complaint Exh. 42. Ms. Veenaben Valabhani was examined vide affidavit Exh. 33 in this case. Apart from what is stated in affidavit, she also states that opponent No. 1 Jalaram Hospital has paid Mayo Hospital bill amounting to Rs. 1,80,000. An affidavit at Exh. 48 of Dr. Prakash Narayan Tiwari is filed. The witness does not contribute meaningfully as the witness is only MBBS, has not examined Vandanaben, is not in knowledge that will be required in this case i.e., regarding anaesthesia, has not produced any literature to substantiate his statement. Dr. Kavita Udwani was examined as witness (her W.S. Exh. 22). She states that she is a panel doctor of Jalaram Hospital and attends when called. She is M.D., Anaesthesia. It is true that preoperatively condition of Vandana was normal. Operation of tonsillectomy was not done. In one out of hundred pentothal can cause ''heart attack''. In this case that had happened and all attempts were made to revive and heart started working normally. Vandana regained consciousness after 1 to 2 hours. Oxygen cylinders were available in operation theatre. Operation of Tonsillectomy is unusual. Patient was also given scoline. Scoline does not cause ''heart attack''. Dr. Kavita explains the writings on her husband''s nursing home file. Dr. Kavita further states about various doctors called in half an hours to two and half hours after incident of cardiac arrest in operation theatre. Anaesthesia report was prepared on the same day of incident. It is not true that because of her negligence Vandana suffered mental defect.

Dr. Pandya, Superintendent of Jalaram Hospital (Exh. 25) was examined and essentially confirms what he has stated in his affidavit. We have perused various documents. We have gone through the deposition of the witnesses. We have also heard the learned representative for the complainants and the learned advocates for the parties. We have also gone through the following citations presented before us by the parties. 1. Mumbai Grahak Panchayat v. Dr. Mrs. Rashmi B. Fadnavis & Ors., I (1998) CPJ 49 (NC)=1996 (1) CPR 137. 2. Harjot Ahluwalia (Minor) through parents v. M/s. Spring Meadows Hospital & Ors., II (1997) CPJ

98 (NC)=1997 (3) CPR 1 (NC). 3. Prasanth S. Dhananka v. Nizam''s Institute of Medical Sciences and Ors., I (1999) CPJ 43 (NC)=1999 (1) CPR 42. 4. Dr. K.G. Krishnan v. Praveen Kumar (Minor), II (2003) CPJ 125 (NC). 5. Dr. G.D. Jiladia v. Minor Dharmistha Chhotubhai Goswami & Anr., II (2003) CPJ P. 381. 6. The Chairman, Meenakshi Mission Hospital & Research Centre v. Samuraj & Anr., I (2005) CPJ 33 (NC)=2004 (3) CPR 139 (NC). 7. Reji Mathew and Anr. v. Dr. Radha Krishnan & Anr., 2004 CTJ 553 (CP)(NCDrC).

7. IT is necessary at this stage to briefly highlight the following points: Opponent Dr. Kavita or for that matter any of the opponents at any point of time has not stated, produced documents or evidence that basic investigation like pulse oxymeter or blood gas analysis was done which would indicate the status of oxygen in blood. Lack of which has irrefutedly caused the cardiac arrest. As per claim of Dr. Kavita Udwani Thiopentone caused cardiac arrest. Thereafter other drug scoline was given. Thereafter patient was positioned and cardiac arrest came to be noted only then. That would certainly mean for at least 10-15 minutes the arrest or near arrest remained unknown and unattended which is hopelessly beyond safety window period of 2 to 3 minutes and that led to lack of oxygen to brain and subsequent damage. Looking to the case papers presented type of writing, different ink in the writing done in alleged continuity and disparity of case paper, statement and that of written statement of opponent and her evidence, raise the question of authenticity of case papers. It is also to be noted that before starting of operative procedure by Dr. Nane endotracheal tube needed readjustment, almost 10-15 minutes after initial insertion. Would that not indicate that endotracheal tube was not properly placed and the x-ray chest further substantiated complication because of improper tube position. That certainly leads to defective oxygen delivery to lungs, which in turn lead to cardiac arrest and also brain damage.

8. OPPONENT No. 1 Jalaram Hospital is a Trust hospital, has not charged the patient Vandana, and on humanitarian grounds paid Rs. 1,70,000 bill of Mayo Hospital and also not charged any bill of Jalaram Hospital. Further, opponent No. 2 Dr. Kavita is not their employee. No consideration is given to her for her work in the hospital. Dr. Kavita receives her remuneration directly from patients. The hospital has also not accepted any liability of Dr. Kavita Udwani expressly or impliedly. The hospital also appears to have done that part of duty to the patient as expected, creditably. We do not consider it reasonable to involve them in any further cost that may be awarded to the complainant. It is also to be noted that Dr. Kavita Udwani is insured with the New India Assurance Company Limited by Doctor''s Medical Indemnity Policy No. 46220203/01404 valid from 24.11.1993 to 23.11.1994. The company was joined as party by order dated 25.6.1996. Notice was served to them and their learned Advocate Mr. H.M. Bhagat has filed Vakalatnama Exh. 19. We do not have their written statement on record. The said company has not denied their liability to indemnify. The amount indemnifiable as per record is Rs. 7,50,000 (Ann. 1 P. 37). It is necessary at the outset to recapitulate certain facts which acts as a fulcrum around which the

events in the present case rotate. It is not disputed that Ms. Vandana was young, talented, healthy and having a promising future. It is also not disputed that she was to undergo a planned safe and relatively minor operative procedure viz., tonsillectomy. As per the custom prevailing in hospital "A day care surgery" meaning thereby a patient comes to the hospital in the morning, gets the procedure done and is discharged by evening and this is what was expected in case of Vandana. Admittedly Vandana was admitted to hospital healthy in good spirit and came out of it as a wreck and devastated also plunging the family in grief and sufferance. All these with a bonus of not having surgery for which she was admitted. Vandana''s subsequent existence was not only painful to her but to the family as well who had to nurse her like an infant taking care of all her day-to-day activities like feeding, bowel care, bladder care and later on special care that a woman needs. To this was added the huge financial burden needed to carry on treatment and management of Vandana, thanks to the hospital where this mishap occurred, who generously paid her initial medical expenses, but this certainly does not absolve the hospital of its duty to the patient Vandana and equally are liable to compensate as demanded in the complaint.

9. VANDANA came to Jalaram Hospital on 19.3.1994 around 8 a.m. as per appointment; was reassessed and was found fit and prepared for surgery under general anaesthesia, she was wheeled in to the operation theatre and anaesthetic procedure started. As is evident from the records VANDANAben had cardiac arrest before the surgery for removal of tonsil commenced, surgery was abandoned in favour of resuscitation of cardiac arrest. This happened clearly within the four walls of the operation theatre where the complainants or their relatives had no access and the chronology of events and causes thereof are in the exclusive knowledge of opponents, most particularly Dr. Udwani, the Anaesthetist and occurrence of such event- cardiac arrest-in young healthy and fit person who has no cause predisposing or existing to cause cardiac arrest in itself speaks of the dictum of res ipso loquitur and it will clearly apply here.

10. ONE of the contentions raised by opponent No. 2''s learned Advocate is that the patient was given Sodium Thiopentone as a initial drug to induce anaesthesia and that the said drug is known to cause cardiac attack as a known complication though this is rare complication. It is also not preventable. Now the records go to show that cardiac arrest occurred after positioning the patient. That would mean as per the records more than at least 10-15 minutes after injection of Pentothal. It is also submitted that the said drug has ultra short acting effect meaning thereby the effect of drug wears of within a few minutes. If that be so the possibilities are that the drug is not responsible for cardiac arrest or the cardiac arrest was recognised late. Controversy also is raised about the doses of drugs used but then records do not show the drugs were used in disproportionate doses. There is no answer from opponent or learned Advocate to the specific query regarding precise time of cardiac arrest. What did the monitors read just prior to the arrest? How long did it take to revive the heart. We have perused the documents on record and that also does not lead to nearest than 10 minutes to

the incidence of cardiac arrest where diagnosing and reviving window time is about 2-3 minutes in cardiac arrest case, the delay is hazardous and more often than not is followed by disastrous consequences. Good as it is for victims of such cardiac arrest. They occur mostly in operation theatres or intensive care areas and all extensive facilities and personnel are available at hand to handle the situation. The result is usually rewarding. Non-rewarding result will ominously point fingers at the health care giver''s services and they will be required to vindicate their stand by their acts and records.

In the present case there is no dispute that a cardiac arrest occurred in normal, healthy, fit young person who has to undergo relatively minor operation of tonsillectomy. Operation surgery was not begun and in view of cardiac arrest and its management it was abandoned. From the ultimate outcome of cardiac arrest in form of physical and mental activity compromise and in absence of any explanation or record it reflects that for some reasonable time cardiac activity did not regain or effectively regained. Respiration was also affected and combined effect led to lack of oxygen to brain for long enough time to cause permanent damage. The opponent doctor has not brought on record the monitoring procedures, monitor data nor has been able to give the cause or probable cause of cardiac arrest based on the facts and circumstances of the present case and why and how it took long enough to receive the heart when all facilities were expected to be available in operation theatre as claimed. The opponent doctor is also not able to explain the prolonged period of lack of oxygen to brain or inefficient cardiac activity (by recording of pulse oxymeter, ECG, blood gases, etc.) What happened within the four walls of the operation theatre by action, inaction or improper action needs to be explained by the person claiming immunity. Here, opponent No. 2 has failed to prove her innoncence. Conversely, her acts, explanations and lack of evidence to support her claim draw the inference that there was an element of negligence and deficiency in service as far as pre-anaesthetic and per anaesthetic care, caution and management of cardiac arrest are concerned. It is also clear that a young talented, individual has become physical, economical, social and legal liability/burden to the lower middle class family where father is alleged to have died following shock of disaster to his daughter and sister of Vandanaben had to take the decision of not marrying and not live normal, social family life to care for Vandanaben. The opponent''s submission is that the complainant has not produced expert evidence to prove her case. Here we may observe that where the facts stare at you (both verbal and written) and that when the opponents themselves have not exonerated them squarely as observed earlier, formality of expert witness in such situations is uncalled for. The claim of opponent that proper drugs and doses were given even if accepted without question does not explain occurrence of cardiac arrest. With everything being normal with the patient, it would put the further burden on opponent to explain why with above situation cardiac arrest should occur and take inordinate time to revive which they have failed to show.

11. OPPONENT No. 1 hospital says that the said anaesthetist is not their

employee. Hospital does not pay for services. Payments are made by the patients and that hospital provides the infrastructure of nursing home. Hospital has given gratis service to Vandanaben on humanitarian ground. Hospital has paid bills to the tune of more than Rs. 1,00,000 to other hospital for patient Vandanaben. Complainant is also not eager at his stage to press compensation from the hospital. Complainant also seeks permission to keep opponent No. 3 Dr. Nane as a formal party and does not press charges against him. Complainant exonerates opponent Mayo Hospital and says that the hospital was joined as a formal party and not necessary party and does not press cost from hospital. Complainant states that whatever bills were available are produced. The Commission may consider the claim sympathetically and award appropriate relief looking to the plight of Vandanaben and family. Looking to the facts and circumstances particularly the disability and physical status of Vandanaben and also that for the rest of life Vandanaben will have to depend on others for her lookafter, we feel total sum of Rs. 3,00,000 will be just and proper for the future security of Vandanaben. Following order is passed. ORDER

12. COMPLAINT is partly allowed. Opponent No. 2 Dr. Kavita Udwani and opponent No. 5 The New India Assurance Company Limited jointly and severally will pay to the complainants Rs. 3,00,000 with 9% interest from the date of complaint till realisation. Complainant No. 2 will also receive cost of Rs. 2,500. Complainant No. 1 Jagrut Nagrik will be paid cost of Rs. 2,500. This order will be complied with within 30 days from receipt of the order. Complaint partly allowed.

