(2014) 09 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

J.D. Bagree Hospital — APPELLANT

Vs

Vandana Goyal — RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 609 : 2014 4 CPJ 246

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Advocate : AMIT PUNJ , NAVEEN TRIPATHI , S.TRIPATHI , M.M.Bagree

Judgement

1. THESE two cross -appeals have been filed under section 19 of the Consumer Protection Act, 1986 against the impugned order dated 12.01.2009, passed by the Rajasthan State Consumer Disputes Redressal Commission (for short ''the State Commission '') in Consumer Complaint No. CC/11/2007, vide which the complaint filed by Smt. Vandana Goyal in this case of alleged medical negligence was partly allowed and the OPs were directed to pay a lump sum compensation of ''_5_lakh to the complainant, besides a sum of Rs. 5,000/ - as cost of litigation. The OPs, J.D. Bagree Hospital and Dr. M.M. Bagree have filed FA No. 58 of 2009, seeking dismissal of the consumer complaint, whereas the complainant Smt. Vandana Goyal has filed FA No. 106 of 2009, seeking enhancement of the compensation as per that demanded in the complaint.

2. BRIEF facts of the case are that the complainant Smt. Vandana Goyal, r/o Bikaner, Rajasthan, felt sudden pain in her stomach on 18.01.2006 and she was unable to pass stools properly. The husband of the complainant took her to the OP Hospital where she was admitted on 18.01.2006 and advised a small surgery to remove sticking of some part of intestines. The surgery was conducted on 20.01.2006 by Dr. M.M. Bagree in the OP - 1 Hospital. It has been alleged that the said Doctor performed hysterectomy (removal of uterus) also without her consent, during the said surgery. The complainant was discharged from the hospital on 26.01.2006 but she had to be admitted again just after two days on 28.01.2006 with complaints of unbearable abdominal pain and vomiting. It has been alleged in the complaint that during treatment in the OP -1 Hospital, blood

was supplied to the complainant and water was removed from her stomach, but her condition kept on worsening day by day. She also suffered from jaundice and her problem of gas in the stomach, regular stoppage in urine excretion and constipation still persisted due to lack of attention and carelessness on the part of OPs.

3. AS per the clinical notes contained in the ''case summary '' maintained by OP -1 Hospital, it has been stated as follows: - ''''Re -admitted on 28th night with complaints of pain in abdomen and vomiting. On examination vital parameters were settled. There was slight distension of the abdomen, had passed flatus and motion in the morning and had not passed in the afternoon or after that. Liver spleen not palpable. Management started on expectant lines, slightly improved in the next morning, had passed flatus also but did not pass motion. Next day progress was not much satisfactory. The distension increased, had nauseating feeling, flatus, motion not passed. Had temperature in the night and the pain was felt in right loin radiating to groin. Also had difficulty in passing urine, complaining that the urine flow was intermittent. On examination there was slight mucus passed per rectum. Vagina was dry. The following investigations were done - USG - Huge ascites filling whole of the abdomen, portal vein splenic vein, liver Blood - Hb. 4 gms %, Serum Sodium, Potassium, Creatinine and bilirubin all were within normal limit. Ascitic fluid - Cells - > 600 / cmm - 85% were neutrophils. 15% lymphocytes, Protein - 4.8 Gm%, Sugar - 60.36 mg%. No bacteria seen on microscopic examination. ''''

It is thus stated in the case summary made by the OPs that there was huge fluid in the abdomen and that therapeutic paracentesis was done to remove 2.5 litres of fluid and 2 units of blood was transfused - first on 31st Jan. and the other on 1st February. It is also stated that the case was being transferred to a physician ''s care in PBM Hospital.

4. IT has been stated by the complainant that finding no improvement in her health, the brother of her husband, Dr. Arun Goyal, a cardiologist at the Bhailal Amin General Hospital, Vadodara, came to Bikaner and contacted the OPs, who told him that her disease was under control. However, her brother -in -law took her to Vadodara and got her admitted at the Bhailal Amin General Hospital, where the case summary records her diagnoses as ''''Post Hysterectomy Right Ureteric Injury, intra -abdominal urinary leak, ascites, intestinal obstruction and septicaemia. She was subjected to intravenous pyelography and systogram (IVP + Systogram) which showed leak of dye from right ureter (urine pipe) into a cavity at the level of L4 to S 1 -2. The ultrasound examination showed same quantity of peritoneal fluid collection even after 24 hours. In view of her deteriorating condition, she was taken for emergency surgery in the evening of 07.02.2006. It has been stated in a note recorded by Dr. N.A. Jadeja, Consultant Urosurgeon, Bhailal Amin General Hospital on 21.04.2006 as follows: - ''''Right Bladder Boari Flab ureterostomy with D/J stenting was done and then peritoneal exploration, adhesionolysis, drainage of peritonitis, multiple loculated collection

drainage were done. She continued to have increased drainage from the drains. IVP showed leak at L5 -S1 level. Hence emergency open nephrostomy, was done on 12/02/06 night. Due to persistent drainage nephrostomy was changed to malecot PCN tube on 02/02/06 and drainage stopped and she improved. Secondly suturing was done on 20/02/06, in the same sitting. Nephrostogram and change of new malecot PCN tube was done on 21/04/06. ''''

5. THE complainant was discharged from the Bhailal Amin General Hospital on 05.03.2006. Later on, in July 2006, she underwent further treatment at Mulji Bhai Patel Urological Hospital, Nadiad.

6. THE complainant filed the consumer complaint in question against the OPs alleging that during surgery done at the OP Hospital, OP -2 Doctor had negligently applied ''cut '' at the right pipe of urination, which resulted into her worsening condition. Even when she was re -admitted into the OP Hospital on 28.01.2006, they were not able to make proper diagnosis upon her condition. She had suffered a lot due to the said medical negligence performed by the OPs and she demanded a compensation of ''_29,10,123/ - from the OPs including the cost of treatment undergone by her.

7. ON the other hand, the version given by the OP Doctor is that the patient/ complainant had already undergone sterilisation operation at Jaipur for removal of her uterine fibroids before coming to their hospital. During clinical examination and investigations in their hospital, the diagnosis of ''''Ac. Intestinal Obstruction due to intestine getting adherent to partly removed fibroids '''' was made and she was put on conservative treatment. When there was no improvement for two days, the surgery was planned and it was explained to the patient and her husband that since the intestines were adherent to fibroids, uterus might have to be removed to prevent recurrence of the problem. According to the OPs, both the patient and her husband agreed to this line of treatment and both of them signed the printed consent form for a major operation after the clause regarding removal of uterus was added in hand on the printed performa. The Doctor has stated that during surgery, the attempt to separate intestinal loops from uterus fibroids failed and looking at the risk of life -threatening complication of faecal fistula in case her intestine were injured, her uterus was removed. The patient was discharged on 26.1.2006 and she left the hospital on foot. However, the complainant was readmitted to the Hospital on 28.01.2006 with complaints of unbearable abdominal pain and vomiting. She had difficulty in urine and the urine flow was intermittent. The ultrasound examination (USG) showed huge ascites filling the whole abdomen. Therapeutic paracentesis was done to remove 2.5 litres of fluid. The patient was examined by Dr. P.K. Sareen, Pathologist, who found it to be ascetic fluid. She was also referred to a physician for further treatment on 04.02.2006. However, the patient slipped away from the OP Hospital on 05.02.2006 and got herself admitted in Bhailal Amin General Hospital at Vadodara under the care of her brother -in -law Dr. Arun Goyal. She left with all the papers related to her and without paying the hospital bills. As per the

version of the OP Doctor, the right ureteric injury took place during surgery done on 07.02.2006 at the Bhailal Amin General Hospital. Despite many attempts made at that hospital on later dates, the mistake done during surgery on 07.02.2006 could not be rectified. Ultimately, she was operated upon successfully in July 2006 at Moolji Bhai Patel Urological Hospital, Nadiad and since then, she is quite alright. According to the OPs, the ureter was not injured during removal of uterus at the OP hospital, but the injury took place at the Bhailal Amin General Hospital.

8. THE State Commission after considering the evidence produced by both the parties, partly allowed the complaint and ordered that a sum of Rs. 5 lakh should be paid to the complainant alongwith Rs. 5,000/ - as cost of litigation. It is against this order that the complainant as well as the OPs have filed the present appeals.

9. DURING hearing before us, the learned counsel for the complainant reiterated the facts stated in the complaint saying that the removal of uterus (hysterectomy) was done on the complainant without her consent. Referring to the hand -written version added on the consent letter, the learned counsel stated that these words were added later on and they never gave consent for removal of uterus. The learned counsel also stated that during the surgery in the OP hospital, a ''cut '' was made in the right ureter (urine pipe) which resulted in collection of urine in the abdomen and subsequent complications. The OPs were, therefore, negligent in performing their duties and hence the compensation as demanded in the complaint should be paid to the complainant. The learned counsel pointed out that Intravenous Pyelography (IVP) should have been performed in the OP hospital so that correct diagnosis could be made. The said procedure was, however, performed at Bhailal Amin General Hospital on 07.02.2006. As per the report of Dr. N.A. Jadeja, Consultant Urosurgeon at Bhailal Amin General Hospital, there was leakage of dye from the right ureter into a cavity at L4 to S1 - 2 level. The learned counsel has also drawn our attention to the case summary made at Bhailal Amin General Hospital dated 22.05.2006, in which it has been stated that IVP showed right ureteric tear/leak.

10. DR . M.M. Bagree appeared in person and was heard. His counsel was also heard separately. He stated that he was a qualified surgeon with a Master ''s Degree in surgery obtained in 1972. The patient was referred to him by her own brother -in -law Dr. Arun Goyal working at Bhailal Amin General Hospital. She had undergone previous operations for removal of fibroids etc. Before performing the surgery, the consent of patient and her husband was taken including that for removal of uterus. The patient and her husband signed the consent form after the lines regarding removal of uterus had been written on the same. Dr. M.M. Bagree reiterated the version given in his written synopsis saying that her uterus had to be removed, otherwise there could be recurrent chances of fibroids. The Doctor maintained that his action had been found to be in order by the Rajasthan Medical Council as well. According to the OP Doctor, the patient did not suffer

from any complication relating to intestines or fibroids after the surgery done on 20.01.2006. When she returned to the Hospital on 28.01.2006, it was found that there was collection of fluid in her abdomen and she was found to be suffering from moderate ascites. The Doctor stated that the ''cut '' in ureter had taken place at Bhailal Amin General Hospital and not in OP hospital.

11. THE learned counsel for the OPs stated that the brother -in -law of the complainant Dr. Arun Goyal had been in constant touch with Dr. M.M. Bagree and he even sent a letter thanking Dr. Bagree for the efforts made by him. The learned counsel stated that every possible effort had been made by the OPs to attend to the patient and there was no medical negligence of any kind on their part. In fact, the medical summary made by the Moolji Bhai Patel Urological Hospital Nadiad had proved that the surgery done at the Bhailal Amin General Hospital was not a success.

12. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. Two main issues are involved in the present case -the first one relates to obtaining consent form the patient before surgery was conducted for removal of uterus etc. by Dr. M.M. Bagree in the OP Hospital. On record, there is a printed agreement letter in Hindi language which is signed by the patient and her husband. This agreement letter mentions about the quantum of various charges for providing accommodation and carrying out various procedures in the Hospital. In this document, it has been stated that the patient had been explained about the possible risks involved in the surgery. It is also stated that every effort shall be made to provide proper treatment to the patient but there was no guarantee of success. The patient had signed after reading the contents of the said agreement. One line had been added in hand saying that the uterus could be removed if the necessity arises and the patient was agreeable to that. The State Commission observed that this document was just a contract agreement between the parties and in the absence of signatures of the OPs, it cannot be stated to be a valid consent letter. It is made out, however, that there are affidavits filed by Dr. M.M. Bagree and a duty nurse Mrs. Kamla Acharya stating that the consent was taken from the patient before conducting surgery. There is no evidence on record to hold that the hand -written line relating to the removal of uterus had been added later on, in the absence of which an adverse inference cannot be drawn against the OPs. Moreover, the patient/complainant or her husband, have nowhere denied that they had signed the said agreement/consent form.

13. REGARDING the second issue concerning the right ureteric injury suffered by the patient, it has been alleged that the said injury took place at the time of surgery done by the OP, Dr. M.M. Bagree, whereas, the version of the OPs is that the said injury took place during the procedures carried out at the second hospital, Bhailal Amin General Hospital, Vadodara. The case summary prepared by the OP Hospital, as quoted earlier, says that when the patient was readmitted to OP Hospital on 28.01.2006, the ultrasound examination conducted upon her

showed, ''''huge ascites filling whole of the abdomen ''''. Therapeutic paracentesis was done to remove 2.5 litres of fluid. The same procedure was repeated on subsequent dates also and fluid was taken out. The OPs have taken the stand that the said fluid was ascites fluid and not urine. However, the OPs have not been able to explain whether they made proper efforts to ascertain the cause of collection of such huge quantity of fluid in the abdominal region. They have mentioned in the ''''case summary '''' about the treatment given to the patient when she was readmitted into the hospital but it is nowhere clear whether the OPs were able to correctly diagnose the exact cause of the worsening condition of the patient.

14. ON the other hand, the note recorded by Dr. N.A. Jadeja, Consultant Urosurgeon, Bhailal Amin General Hospital, on 21.04.2006 states as follows: - ''''Intravenous pyelography and cystogram (IVP + Cystogram) were done on 07.02.06 afternoon, and they showed normal left kidney, ureter, and bladder. Right kidney - there was good function, minimum fullness of Pelvicalyceal System and leak of dye from right ureter into a cavity at the level of L4 - to S1 -2 level. The leak was from the right ureter. In the view of her deteriorating condition; she was taken up for emergency surgery in evening on 07.02.2006. ''''

From the above, it is made out that the Intravenous pyelography (IVP) done on the patient on 07.02.2006 indicated the leak of dye from the right ureter, meaning thereby that the patient had a ''''right ureteric injury '''' before she came to Bhailal Amin General Hospital. A natural inference can be drawn that the said tear or cut, took place when the patient was being treated at the previous hospital, i.e., the OP Hospital.

15. IT is made out from these facts that had the IVP been done at the Bagree Hospital, the exact condition of the patient could be known and appropriate treatment could be given to her. The facts and circumstances of the case and the sequence of events, therefore, do lead to an irresistible conclusion that the right ureteric tear took place at the OP Hospital during the procedure performed upon her at that Hospital. Obviously, the said injury amounts to medical negligence on the part of the Doctor for which no reasonable explanation has been furnished by the OPs. The Hon ''ble Apex Court in a landmark judgement on medical negligence in the case of ''''Jacob Mathew v. State of Punjab [(2005) 6 SCC] '''' have dealt with the issue of medical negligence in detail and stated in their conclusion as follows: - ''''(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal and Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: ''''duty '''', ''''breach '''' and ''''resulting damage ''''

16. IT has been amply made clear in the above judgement that the cause of action for negligence arises when there is a resulting damage. In the case in hand, it is clearly established that the patient did suffer damage due to the procedure performed upon her at the OP Hospital. The right ureteric injury caused to the patient resulted in extensive damage to her for which she had to undergo treatment at two other hospitals subsequently. Further, when the patient was readmitted to the OP Hospital on 28.01.2006, the OPs were not able to make proper diagnosis about her condition. During hearing before us, the OP Doctor could not explain the reasons as to why the IVP was not performed upon her, when she was admitted to their hospital second time. Had they done the IVP, the problem could have been detected in the OP Hospital itself and proper treatment could be administered to her. OPs are, therefore, held to be negligent in causing injury to the patient during the course of surgery and then for their failure to diagnose the problem when she was admitted with them second time.

17. VIDE impugned order, the State Commission have allowed payment of Rs. 5 lakh as lumpsum compensation to the patient. In her complaint, the complainant demanded a sum of ''_29,10,123/ - as compensation on various counts including expenditure on medical treatment, travelling expenses, compensation for medical negligence and compensation because of her resultant weak physical condition. Considering the overall facts and circumstances of the case, we are of the opinion that the State Commission has already awarded a reasonable amount of compensation to the patient. We do not feel any necessity to make any change in the quantum of compensation so awarded. Both the appeals in question are, therefore, ordered to be dismissed and the order passed by the State Commission confirmed. There shall be no order as to costs. The statutory amount, if any, alongwith interest may be returned to the appellants.

