(2009) 07 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Kamalakar Dhyaneshwar Mate — APPELLANT

Vs

Ranade Hospital Organization And Ors. — RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 07 NCDRC CK 0010

Hon'ble Judges : K.S.GUPTA , S.K.NAIK J.

Final Decision : Complaint dismissed.

Judgement

1. THIS consumer complaint has been filed by Shri Kamalakar Dhyaneshwar Mate, a lawyer turned contractor, alleging medical negligence by respondents in the conduct of Appendectomy claiming a compensation of Rs. 50 lakh. As per the complainant, he was suffering from pain in the abdomen and on being advised by Dr. Vinayak Desurkar - opposite party No.3 he got himself admitted in Ranade Hospital Organization - opposite party No.1 where his medical check -up was conducted by Dr. Utkrant K. Kurlekar - opposite party No. 2 who diagnosed his problem to be a case of Appendicitis requiring immediate operation. The complainant, therefore, got himself admitted in the hospital on 2.7.1994. While Dr. Utkrant Kurlekar - opposite party No. 2 conducted the operation, anaesthesia before the operation was administered by Dr. Desurkar - opposite party No3. The complainant remained in the hospital from 2.7.1994 to 6.7.1994, when he was discharged with the advice to visit the hospital on the following Saturday. He was further prescribed some medicines for post -operational healing. As per the complainant, he visited the hospital on the following Saturday of his discharge when the stitches were removed and, thereafter, made a number of visits for medical check -up as advised by the doctors. Even after the operation, however, he never experienced the comfort of complete cure and continued to experience the abdominal pain as also severe headache and fever at times. He, therefore, reported this aspect to the opponents who explained it away that the pain being experienced is nothing abnormal in a post -operation phase and that it will automatically stop with the passage of time. Since the pain did not subside, he requested the opposite parties to seriously look into the problem and on his

request, he was again admitted in the hospital on 14.7.1994 and after the formal check -up of his condition, he was discharged the very next day i.e. on 15.7.1994 with the advice to take certain prescribed medicines. He was further advised to attend the hospital on the next day i.e. on 16.7.1994. Even on 16.7.1994, he was assured that the pain as well as fever and headache shall stop automatically. Contrary to this assurance, however, the condition of the complainant further deteriorated to the extent that on 21.7.1994, he developed the feeling of being unconscious and his wife and father informed the opponents who promised to visit him at his residence. Even after a long wait, they did not turn up. By the evening, he had to be rushed to another hospital by the name of Ruby Hall Clinic where he was treated by Dr.Wadia. According to the complainant, he was admitted in an unconscious state and continued to remain in the same state for about four days. Even, when he regained consciousness, he was not able to talk, walk or make any bodily movements and he remained in the same condition for nearly a month under the treatment of Dr. Wadia from 21.7.1994 to 15.8.1994. However, there was not much improvement and the doctor advised him a month''s complete bed rest without any movements. Since, he was unable to sit, walk and stand properly even after a lapse of a period of three months, on the advice of his family doctor, he contacted Dr. Charudatta Apte and remained under his treatment till March 1995. His condition, however, did not improve and he thereafter, approached the KEM Hospital, Pune for rehabilitation and when his condition there did not improve much, he approached Dr. Sudhir Kothari, a renowned specialist who after going through his medical history opined that, fortunately his memory and insight is preserved but his speech is hesitant and has a partial motor aphasia almost like a disarthria resulting in inability to write fast and also found that there is minimal spasticity on the right side. The doctor further concluded that a great damage has been caused to the complainant''s speech and drugs would not have much effect to improve the disability. In this background of his sufferings, the complainant felt that the root cause was wrong medical advice, improper treatment, improper and disproportionate administration of anaesthesia and negligence in removing the appendix. He felt that it was a case of negligence as well as lack of proper and adequate post operative care.

2. ON the point of compensation, the complainant in his complaint has stated that even though, he was a highly qualified person and started his career as a practising lawyer in Pune, he started the business of a contractor due to some exigency with the hope to return to his practice in future. However, his capacity to speak having been impaired, he has lost the hope to restart his practice and his present business too is suffering because he can neither walk nor stand properly. According to him, he was making a net profit of Rs. 2 lakh p.a. on an average which he had a vision to take to Rs. 15 lakh p.a. and develop his business into a promoter and developer firm. His dreams, however, have been completely shattered. Giving further details, he has sought a compensation of Rs. 50 lakh with Rs. 15,000 as cost since the opposite parties have failed to

respond to the legal notice issued by him.

3. ON notice being served, the opposite parties have contested the complaint. Parties thereafter, were called upon to file their respective evidence. The complainant has filed his own affidavit, the affidavit of his father and affidavit of his wife, besides the discharge card from the Ruby Hall Clinic, the appointment card from KEM Hospital, Pune, the report of Dr. Kothari and host of copies of the receipts for the purchase of medicines, etc.

4. THE opposite parties have supported their averments in the written statement by filing their own affidavits and affidavit of Dr. Chavan. They have also filed medical literature in support of the ground stated in their affidavit in defence.

5. WHEN the matter was taken up for consideration on 30.10.2003, the complainant as also the opposite parties agreed to get the complaint decided on the basis of affidavits and medical evidence; thereby doing away with any cross - examination or interrogatories. We, therefore, proceed to decide the matter on the basis of arguments advanced by the complainant who has appeared in person and argued his case as also the arguments by learned Counsel for the opposite parties on the basis of documents/medical records filed by them.

6. THE complainant who is an Advocate turned Contractor, has submitted that the operation of Appendectomy was performed by opposite party No.2 in the hospital of opposite party No.1 and anaesthesia was administered by opposite party No.3. He was hospitalized for a period of five days from 2.7.1994 to 6.7.1994 and remained under the supervision of not only the operating surgeon - opposite party No.2 but also of the hospital whose doctors and staff treated him during the post -operative phase. Thus, the complainant contends that all the three of them i.e. the hospital, operating surgeon and the anaesthetist are responsible for the medical negligence resulting in physical disability.

7. THE complainant submits that for a simple operation like the removal of his appendix, he had to remain in the hospital from 2.7.1994 to 6.7.1994 and even after the removal of the stitches on 9.7.1994, he had to visit the hospital repeatedly as the pain in the abdomen did not subside. He was admitted in the hospital for the second time for two days i.e. on 14.7.1994 and 15.7.1994 and had to report again on the next day. All this while, he was apprising the doctors that not only there has been no relief of the abdominal pain but on the contrary he had been experiencing mild fever and headache and on 21.7.1994, he became serious and lapsed into unconscious condition. He alleges that even though opposite party Nos.2 and 3 were contacted on telephone and informed about his serious condition, their attitude was of total indifference as they initially promised to send a doctor for giving treatment at the house of the complainant but did not bother till late hours in evening which forced the wife and father of the complainant to take him to the Ruby Hall Clinic and get him admitted there. He had to be hospitalized there from 21.7.1994 to 14.8.1994 under the supervision of a renowned physician, Dr. R. S. Wadia. Relying on the discharge

summary of Ruby Hall Clinic, wherein, it has been stated that the complainant was admitted in the hospital and treated for Meningitis, the complainant contends that the complications giving rise to Meningitis was because of the lack of proper treatment by the doctors and their hospital of the opposite party. According to him, it was a clear case of negligence and deficiency in service. In particular, he alleges that spinal anaesthesia was not properly administered by opposite party No.3. Relying further on Annex.H which is a letter of Dr. Sudhir Kothari, Neurophysician addressed to Dr.B.L. Deshmukh, the family physician of the complainant, he contends that a perusal of the said letter makes it clear that his health problem was created due to negligence and deficiency in service committed by the opposite parties by improper administration of anaesthesia as well as deficiency in post operative care. The complainant, thereafter, has referred to Annex.F which is a certificate given by Dr. C.A. Apte and contends that it supports his case against the opposite parties.

8. IN the background of the opinion expressed by these experts, the complainant alleges that the opposite parties repeatedly gave false promise to avoid the responsibilities for their negligent act by telling him that he would be all right with the passage of time. They have not only been negligent and deficient in service but their conduct of completely ignoring the SOS call on 21.7.1994, cannot but be said to be cruel and inhuman, contrary to their professed Hypocratic oath. The complainant has further submitted that his claim of Rs. 50 lakh is fully justified since he was on an average making a net profit of Rs. 2 lakh p.a. and was planning to develop his business prospects to Rs. 15 lakh p.a. and considering that he has lost atleast 10 years of his working life and has undergone tremendous mental agony and physical disability, the estimated loss of Rs. 50 lakh is fully justified. He, therefore, submits that the complaint be accepted.

9. OPPOSITE parties have filed their written statements. The complainant has filed his rejoinder, whereafter the opposite parties have adduced their evidence through affidavits reiterating their ground of defence taken in the written statement. Additionally, they have also filed medical literature supporting their stand that there has been absolutely no negligence either in administration of anaesthesia and performing the operation of removal of appendix nor in rendering proper care and service in the post -operative phase of hospitalization.

10. OPPOSITE party No.1 i.e. the Hospital, in their written version have stated that the hospital has all modern amenities and facilities with Intensive Care Unit. It takes maximum aseptic precautions in all operation theatres and meticulously follows standard practices and procedures for maintaining the hospital and operation theatres. Routinely, all wards are wet mopped thrice a day with an antiseptic solution phenyl. The operation theatre is routinely wet mopped twice a day and after any major operation additionally. Antiseptic phenyl of the standard company viz. Dettol is used for this purpose. The operation theatres are fumigated at regular intervals, minimum once a week with fumigated formiline.

The hospital has autoclaving machine with facilities of controlling system to ensure proper control on autoclaving with "Signaloc" strips which are manufactured by reputed Jhonson and Jhonson Co. which are widely approved. Dressing drums, gloves, draping gowns are daily autoclaved and autoclaved draping gowns, gloves, dressing drums and fresh washed linen caps and masks are always kept ready for use by the operating staff. It has further been stated that over the years, thousands of operations have been performed with neither any complaint nor any complication. From 15.6.1994 to 15.7.1994, 104 operating procedures were conducted, out of which 54 of were major operations. Out of these 104 procedures, 18 operations were performed under spinal anaesthesia without any immediate or remote complications of any kind. The complainant was operated for Appendectomy on 2.7.1994 and remained in the hospital only upto 6.7.1994 when he was discharged. The complainant being a close relative of opposite party No.3, the anaesthetist who has been an Honorary Consultant in the hospital was provided free and concessional treatment by opposite party Nos. 2 and 3 and received priority attention from the staff and the hospital. It has further been stated that the hospital management was in no way concerned with the diagnosis and treatment given by the concerned specialist which was a matter between the complainant and the doctors. Contending that even the complainant has made out no grievance about the infrastructure and service provided by the hospital, the complaint had no legs to stand and deserves to be rejected.

11. OPPOSITE party No.2 - operating surgeon in his written version has stated that the complainant has received special care and attention from him as he was the brother -in -law of his colleague and Anaesthesiologist, Dr. Desurkar - opposite party No.3 who brought the complainant for medical treatment. In fact, he had attended to the complainant for the first time on 2.7.1994 at 7.00 a.m. at the residence of the opposite party No.3 and finding that there was severe tenderness in the right Iliac Fossa especially at Me Burney''s point and he was complaining of Naushea and Anorexia, he was provisionally diagnosed to be a case of appendicitis and was advised admission in the hospital. On admission, blood and urine were tested. Blood report revealed a white blood cell count of 10,000 per cmm with Neutrophilia. Urine test revealed 4 -5 pus cells. Ultra - sonography and plain x -ray of kidney, ureter and bladder did not show an evidence of ureteric calculus. On appendicitis being confirmed from these tests, the complainant was advised surgery which was conducted the same evening under spinal anaesthesia administered by Dr. Desurkar -opposite party No.3. After a successful Appendectomy, the complainant was kept nil by mouth for about 36 hours, intravenous antibiotics were given, dressing was changed upto 48 hours and orally liquids were started on 4.7.1994, after ensuring good peristalsis. Since, the complainant was well and had no complaint, he was discharged on 6.7.1994 after the dressing of wound with instructions to report the next day for removal of sutures.

12. OP No. 2, Dr. Utkrant Kurlekar, in his written submissions has further denied

that either after the operation or thereafter during post -operation treatment, the complainant, ever complained that he was never comfortable. According to him, the operation was done successfully and the complainant was discharged only after he felt well on the 4th day of the operation, after proper dressing with instructions to come for sutures removal on the 7th day of the operation. The complainant did report on the following Saturday, when he had minimal serosanguinous discharge and gaping of the wound at one stitch about 1 cm. in size. Proper dressing, however, was done with instructions to come again for the dressing. Occurrence of gaping wound after emergency surgery for acute appendicitis, is not a serious complication, since such occurrence are noticed in such cases. The doctor has further denied that the complainant ever presented with persistent complaint about pain in abdomen except on the 14th July. With regard to his contention that, he had been having headache, it was complained only on the 16th July. In support thereof he has referred to Annexures A and B filed by the complainant himself, which were written by the Medical Officer about pain in the abdomen. Had the complainant been suffering from headache, fever, etc. persistently, the said facts would have been mentioned in the discharge card. Contending that the complaint with regard to pain in the abdomen was for the first time made on the 14th July, 1994, i.e., after 12th day of the operation, it has been submitted that on examination on that day, his pulse, blood pressure, temperature were found normal. Mild tenderness, however, was noticed all over the abdomen and over the wound, and therefore, an ultrasound examination of abdomen and pelvis was done. The Sonography examination, however, was reported as normal. According to the Doctor, the pain in the abdomen was due to gaseous distention. The complainant, therefore, was prescribed higher antibiotics and other medicines. By the next day, the complainant was feeling better and had no complaint about pain in the abdomen. On clinical examination, it was found that there was no tenderness. It was also noticed that there was no burning micturation. When the complainant came on the 16th July for dressing, he had no complaint about the pain in the abdomen; he was comfortable but for the first time, complaint of mild headache. It has been averred in the written statement that the headache was totally unrelated to appendicitis and appendectomy. Therefore, the complainant was referred to Dr. Atul Deshpande (Physician) to ascertain cause of headache. He had informed Dr. Desurkar, OP No. 3, the relative of the complainant, about this. The complainant had been examined by Dr. Atul Deshpande, who had carried out detailed neurological examination and fundoscopy had also been done. However, nothing was found abnormal. According to OP No. 2, Dr. Kurlekar, the operation was successfully done and the complainant had recovered from the pain of abdomen. The diagnosis of acute appendicitis was correct and whatever happened on 21st July thereafter had no relation/ connection with the diagnosis and appendectomy. Thus, totally denying any negligence or deficiency in the treatment provided by him; the OP No. 2 has submitted that he is not liable or responsible for the alleged unfortunate incident and is, therefore, not liable to compensate the complainant in any manner.

13. OP No.3 Dr. Vinayak Nanasaheb Desurkar, in his written version has submitted that the complainant, who is his close relative, in the morning of 2nd July, 1994 came to his residence with the complaint of severe pain in his abdomen since a day before. He, therefore, requested Dr. Kurlekar, OP No.2, to come to his residence and to examine his relative, who after examination advised admission in the hospital, where -after investigations were conducted and treatment commenced. Ultra sonography was done, x -ray of kidney, ureter and bladder was taken. On an analysis of the reports Dr. Kurlekar diagnosed the problem of the complainant to be an attack of appendicitis, necessitating an operation, which was successfully conducted by the OP No.2 assisted by him, in the administration of anaesthesia. It has been stated in the written version, that at the time of discharge, the complainant had no complaint of any nature. He was found fit and was therefore advised for discharge. The complaint with regard to post -operative allegations that at no time he was feeling comfortable and had persistently complained of abdominal pain has been denied. Being a close relative, it was the complainant who has decided to get himself operated in this renowned hospital, where the OP No. 3 was working as honorary Anaesthesiologist. The operation was done successfully and the complainant was totally relieved from the complaint of pain in the abdomen. He had neither complained during the post -operative phase of the treatment nor did he have any problem at the time of discharge. On the 14th July, 1994, when the complainant came to Doctor Kurlekar, OP No.2, the only complaint he had was with regard to pain in the abdomen. He was, therefore, immediately, admitted in hospital and necessary examinations including ultrasonography was carried out which indicated that the pain in the abdomen was due to gaseous distention. By the next day, his condition improved, wher after he was discharged with instructions to visit on 16th July, 1994 for dressing purposes. There was no complaint of either headache or fever until that time. On the 16th July, when he came for dressing, he came walking, was not having toxic look, was afebrile and had no abnormal signs and symptoms. Nothing abnormal was found on examination by the physician Dr. Deshpande. It has, therefore, been stated that the complainant has suppressed this material fact. The allegation that he had fever and headache from the beginning was an after -thought, as the complaint of mild headache was made for the first time on 16th July, 1994.

14. ON the episode of 21st July, 1994, it has been denied that the wife and father of the complainant ever came to the hospital and contacted him and requested him to take immediate action for the treatment of the complainant. On the contrary, late in the morning of 21st July, 1994, wife of the complainant contacted him and complained about headache. Since he was on his professional visit at that point of time, he was not in a position to rush to the residence of the complainant, however, he had immediately contacted Dr. Chavan, residing nearby the complainant and known to him, with a request to visit the complainant at his residence and attend to the complainant. Their family physician Dr. Deshpande also was contacted and requested to attend to the

complainant. Dr. Chavan, who visited the complainant, found him in conscious state as opposed to the claim of the complainant that he was unconscious. Dr. Deshpande also paid a visit and noticed only mild weakness on the right side of the body. He, therefore, arranged for C.T. Scan on a nearby centre -Medivision. By that time, OP No. 2, was also present and the complainant was advised to get admitted in the Sanjeevani Hospital for prompt management. However, relatives of the complainant insisted for admission into Ruby Hall Clinic, where he was taken and was admitted. OP No. 3, has stated that he himself was present in the Ruby Hall Clinic till 9.45 p.m. He had thereafter been visiting the complainant each and every day being a relative to discharge his social and moral obligations, even though, he could not take part in his treatment since he was under total supervision of another Dr. Wadia of the Ruby Hall Clinic. According to him, the complainant has suppressed all the above facts for strange ulterior motive.

15. OP No.3, has further denied that the complainant was not in a position to stand or walk without the help of stick for a period of six months. According to him, the complainant is trying to misconstrue the opinion given by Dr. Kothari, who only observed that complainant did not require drug therapy and simple effective therapy would be to start going to work and trying to get past his disability and get rehabilitated. The complainant has, to the contrary tried to give an impression that Dr. Kothari gave the opinion that a great damage has been done to the complainant''s speech and drugs would not have much effect to improve.

16. OP No. 3, has further denied that the sufferings, pains and disablements were the cause of wrong medical advice, improper treatment, improper and disproportionate administration of anaesthesia and negligence in operating the appendicitis. He had emphatically denied that any negligence and carelessness was committed in giving post -operational treatment. He has further submitted that while administering the spinal anaesthesia, he had exercised all his possessed skill, knowledge and took all precautionary measures. There was absolutely no breach of professional duties as the highest degree of care in the particular circumstances and situation had been taken. Just because further treatment was required to be taken, it would be wrong to allege that the OP was negligent. Contending that being a relative, he extended all possible help including spending money from his pocket on the treatment of the complainant; the OP submits that the allegations in the complaint are totally baseless, frivolous and had been made to malign the OP. The OP has further contested the claim of the complainant with regard to the compensation, which is without any details. With regard to the case -papers, the OP No. 3, has stated that the case papers were actually given to the complainant, who for some ulterior motive has sent an application with a money order asking for the papers, which were already in his possession. Contending that firstly, the complainant has not suffered any loss as alleged and even if he has suffered any loss that was not due to negligence and/or deficiency in service on the part of the opposite parties. There being no negligence or deficiency, the OPs are not liable and responsible to pay

any compensation to the complainant.

17. ON the main allegation of the complainant with regard to improper administration of Anaesthesia, OP No.3 has stated that he is a highly and fully qualified consulting Anaesthesiologist, who has assisted in 1600 operations without any mishap with all professional efficiency in variety of complicated cases. He had opportunity to deal with approximately 500 cases of neuro and cardiac surgery. He has to his credit a number of papers published in reputed journals and he has himself attended number of national and international conference and seminars on the subject. Spinal anaesthesia is widely used original anaesthesia technique all over the world. By administering this injection anaesthesia is provided for the operation related to lower abdomen and legs. Elaborating the advantage of spinal anaesthesia, OP No.3 has submitted that headache is a common implication and sequel of spinal anaesthesia. But when 25 gauge needle is used, the incidence of post -spinal headache is very very less. Since he had used 25 gauge needle, there is no question of persistent headache, as has been alleged by the complainant.

18. SINCE the main pointer/target of allegations of medical negligence is that the complainant developed meningitis following spinal anaesthesia, OP No. 3 has explained in his written version that meningitis is begin to manifest with maningeal signs within 12 to 24 hours. The bacterial meningitis following spinal anaesthesia is a very rare complication. Referring to medical literature on the subject, he has stated that out of 7,30,000 spinal anaesthesia administered at various centres, only 22 patients had meningitis, meaning thereby the incidence is 0.003%. Therefore, the mechanism of meningitis remains only theoretical retrospective thinking. Since maximum care and precaution has been taken in the administration of spinal anaesthesia and all meticulous aspetic precautions were taken while operating the complainant, there is no reason to apprehend any aseptic technique. The operation theatre was freshly fumigated to make the entire theatre environment almost sterile. The OP had himself checked that there was no local skin infection at the site of lumber puncture. Adequate precaution had been taken for cleaning of skin with 5% Betadin lotion. Narrating in detail, precautions taken prior to undertaking the operation, the OP has submitted that there was absolutely no scope of any contamination and the surgery was completed successfully. As would be evident from the discharge card, the complainant never had classical, clinical symptoms/features of meningitis like, neck rigidity, photophobia, fever, kerning''s sign, vomiting. In the case in hand, there is a gap of almost 20 days from the administration of spinal anaesthesia to the presentation of stroke, which has absolutely no nexus as meningitis associated with spinal anaesthesia can occur only within 2 or 3 days after spinal anaesthesia or lumber puncture and that too with clinical signs of meningitis which the complainant never had. Finally, it has been stated that complaint of meningitis in the case of complainant is not due to spinal anaesthesia or appendectomy. It has been emphatically denied that meningitis developed due to negligence on the part of the opponents. Since the complainant had no classical

or meningeal symptoms or signs any time, the possibility of viral meningoencephalitis cannot be ruled out. Referring to extract from medical literature, it has been submitted that CSF picture and MRI findings resemble more to viral encephalitis, which is incidental or spontaneous and has no relation to anaesthesia or surgery. The OP has, therefore, submitted that the complaint be rejected with costs.

19. THE parties thereafter were called upon to file their affidavit by way of evidence. When the matter was taken up on 30.10.2003, the parties agreed to get the case decided on the basis of the affidavits/documentary evidence filed on record. The complainant thereafter had tried to wriggle -out of this undertaking and approached the Supreme Court, in the matter but had subsequently withdrawn the same restoring the position with regard to the matter being decided on the basis of the affidavit and documentary evidence placed on record.

20. AT the time of final argument, the complainant, who has appeared in person, has argued his own case. He has contended that he was hospitalised for the removal of his appendix from 2nd July, 1994 to 6th July, 1994 in the hospital of OP No.1 where OP No.2 operated on him assisted by OP No.3 Anaesthetist. Even after his discharge from the hospital, he continued to get the pain in his abdomen, which was brought to the notice of the operating surgeon, OP No. 2, on the 9th July, 1994 when he came for the removal of stitches. The matter, however, was not taken seriously and he was casually informed that such pains are normal due to the operation which shall vanish with the passage of time. He had also complained of fever and headache, which again was dismissed as normal post -operative phenomenon. When the pain became intolerable, he again reported at the hospital on the 14th July, 1994, whereupon, he was again admitted for the second time, but was discharged on the next day again with the advice that there was nothing serious and he has to wait for a little while for the pain to subside. However, with the passage of time, his condition deteriorated further and he went into unconscious condition''. His wife and father, thereafter, contacted OP Nos. 2 and 3 on telephone requesting them for emergent attention to the patient at his house. The OPs had agreed to send a Doctor to attend to the emergency call; but despite a very long wait no one ever turned up even until the evening. Apprehending further deterioration in his condition, his wife took him to Ruby Hall Clinic and got him admitted there under the treatment of renowned physician Dr. R.S. Wadia. That the OPs had been negligent in his treatment, is proved from the fact that he had to be hospitalised in the Ruby Hall Clinic from 21.7.94 to 14.8.94. According to him, report of Dr. R.S. Wadia which is at Annexure E'' clearly shows that his health problem arose due to the negligence and deficiency in service committed by opponents while operating, administering anaesthesia as well as in his post -operative care. Contending that even after the treatment of OPs, he had to be hospitalised at Ruby Hall Clinic and even thereafter remained under the treatment of renowned specialists such as Dr. Sudhir Kothari and Dr. C.A. Apte clearly proves that the OPs had been negligent in his treatment resulting in complications giving rise to meningitis.

According to the complainant, both Dr. Sudhir Kothari and Dr. C.A. Apte have opined that his problem was due to the negligence of the OPs. He has relied on Annexure report of Dr. Kothari and Annexure F'' which is a report by Dr. Apte.

21. WITH regard to the doctors whose affidavits have been filed by the Opposite Parties, the complainant argues that they not having treated the complainant, did not have any personal knowledge. Their version, therefore, cannot be relied upon. These affidavits have been managed by the OPs in support of their defence, which should not be taken at their face value as they are fabricated evidence. Referring to the report of Unique Scanning Services Pvt. Ltd., Pune, it has been submitted that no such scanning was ever done in the said institute nor anywhere else. This appears to be a fabricated, baseless document, got prepared by the opponents to create the false evidence in their favour. The complainant, thereafter, has referred to letter dated 9.6.1996 issued by the District Labour Cooperative Society Federation Ltd., Pune. This has been proved to be a false document as the society itself issued a certificate dated 16.1.2004, clearly stating that the complainant was never a member of their federation and had never been given any contract. Manufacturing of such false evidence is indicative of the level to which the OP Doctors can stoop down to.

22. IN conclusion, the complainant has submitted that in view of the findings in their reports given by specialist Doctors such as Dr. Sudhir Kothari, Dr. C.A. Apte and Dr. R.S. Wadia, that the opposite parties had been negligent in administering anaesthesia and operation of the complainant as also in his post -operative care, there cannot be any other finding and therefore, the complaint stands fully established and deserves to be accepted for the amount claimed.

23. WITH regard to the quantum of compensation, he has justified the same on the ground that he being a highly qualified and established lawyer, for some reason had to change his profession to that of a contractor but was earning a sum of Rs. 2 lakh to Rs. 3 lakh per month and had very high ambition to take his business to greater heights and to become a builder. Trie amount claimed, therefore, cannot be said to be unrealistic or exaggerated. Learned Counsel for the opposite parties has contended that the whole case of the complainant is that because of improper or higher dose of anaesthesia administered by OP No. 3 and deficiency with regard to post -operative care, he continued to get the abdominal pain which developed into meningitis as a result of which he had to go from one hospital to the other seeking treatment from a number of super specialists. Contending that he developed meningitis because of negligence on the part of the OPs is absolutely belied from not only from the facts of the case but also on the basis of medical literature on the subject, the Counsel has submitted that the OP No.3 being a close relative of the complainant had not only taken extraordinary care of the complainant but had also mobilised the full support and special care from the colleague OP No.2, the operating surgeon as also the hospital staff during the post -operative period. In such a background, it is very strange that the complainant has levelled allegation against the same very

person who had taken care of him during his period of treatment.

24. AS already contended in the written version supported by the affidavit, the OPs had meticulously and truthfully followed the procedure with best possible precaution such as fumigation, use of masks, sterility, use of disposable syringes, etc. leaving no chance of any infection from any quarter. The complainant was diagnosed to be a case of acute appendicitis and considering the urgency, successfully operated at 8 p.m. on 2.7.94 under spinal anaesthesia. After 36 hours from the operation, he was given liquids orally and was given solid foods the next day. The operation was completely successful and the complainant was feeling well and fine and, therefore, was discharged after 5 days with instructions to come for the removal of the stitches on the 7th day. No doubt when he came for the removal of the stitches, there was a gapping wound at one stitch about 1 cm. in size. Dressing was, therefore, done accordingly. The Counsel has contended that the complainant has tried to make a big issue out of this wound which after emergency surgery does occur specially in case of surgery for acute appendicitis. This is not a serious complication as per medical standards. The complaint of continuous pain in the abdomen was also not true. On examination, it was found to be pain due to gaseous distention for which he was prescribed medicines. The complaint of mild headache was made for the first time on the 16th July, 1994 for which he was referred to Dr. Atul Deshpande, a physician, where -after, the complainant never reported back to the opposite parties and persisted to consult many hospitals and specialists on his own.

25. ON the main allegation that the complainant suffered disablement due to meningitis because of spinal anaesthesia administered during the operation, the learned Counsel has submitted that this is not at all true as meningitis following spinal anaesthesia can be either chemical or bacterial and chemical meningitis begin to manifest with meningeal sign within 12 to 14 hours and bacterial meningitis following spinal anaesthesia is a rare complication. Since in the case in hand, the complainant for the first time complained of headache on the 16th July, 1994 and presented the symptoms of stroke on the 21st July, 1994, there could absolute be no connection between the operation and the stroke after a gap of 20 days. A host of medical literature supports this contention. The complainant in a mistaken belief appears to have believed what was a case of viral encephalitis as its resemblance shows from CSF picture and MRI findings to be a case of meningitis following the spinal anaesthesia and has targeted the OPs without any basis.

26. RELYING upon the medical literature, learned Counsel has submitted that the meningitis of the complainant was an incidental or spontaneous meningitis most possibly of viral aetiology and has no relation to anaesthesia or surgery.

27. IT has further been submitted that OP No.3, the anaesthesiologist, Dr. Desurkar is the maternal cousin brother of the complainant''s wife and because of this close relationship, he did not charge for professional services provided to the complainant. As already stated, being a close relative, he extended all

possible help including spending money for the complainant''s treatment. It has also been submitted that OP No.3, had personally handed over the medical papers collected from the Hospital to the complainant so as to facilitate the complainant to obtain further treatment in Ruby Hall Clinic. The complainant has taken undue advantage of this help extended to him and has tried to foist a case on the opposite parties alleging that they did not hand over the papers to him by referring to some money orders and its receipt. It has also been stated that the complainant is neither suffering from any disablement nor has he suffered any loss on account of so -called disablement. That he is physically fit and fine and present before this Commission and has argued his own case, is sufficient proof that the complainant had not been suffering from any disablement entailing any compensation as there has been absolutely no negligence.

28. WE have heard the complainant, who has appeared in person and the learned Counsel for the opposite parties very patiently. The complainant has charged the opposite parties for negligence in the administration of anaesthesia in the operation of his appendix and with regard to post -operative care in the hospital.

29. THE facts of the case which emerge out of the evidence and submissions made before us reveal that when the complainant experienced abdominal pain, he visited OP No.3, his close relative and also a Doctor at his residence. Feeling concerned about his complaint, OP No.3 requested OP No.2, who is a surgeon to come to his house and examine the complainant. The complainant was duly examined and the surgeon tentatively arrived at the view that the pain was due to appendicitis but required to be confirmed and therefore advised the patient to get admitted into the hospital for diagnostic procedure. After the tests of blood and urine and ultra -sonography and plain x -ray of kidney, ureter and bladder were done, suspicion of the complainant suffering from appendicitis was confirmed. Being a case of acute appendicitis, the complainant required to be operated on an urgent basis and therefore the same evening the operation was organised and respondent No. 3 -Doctor Desurkar administered spinal anaesthesia. The operating Doctor, opposite party No. 2 had taken adequate and proper care such as cleaning of the abdomen with savlon and betadine till dry and then applying spirit. On opening the abdomen, it was found that the appendix was inflamed, edemaots and omentex was adherent. The appendix was removed and haemastasis achieved wherever the incision was closed in layers. The operation was successful and orally, liquids were started on 4th July, 1994 i.e. after 36 hours after ensuring good peristalsis. The complainant was quite well and had no complaints and was therefore discharged on 6th July, 1994 after the dressing of the wound. From the date of discharge i.e. 6th July, 1994 until 14th July, there was no complications or complaint even though the complainant has been saying so but the same is not borne out from the records. It was only on the 16th that for the first time the complainant complained of headache and fever. It appears that it was only after this day that things started going wrong for the complainant when he decided to change his Doctors and thereafter got

him self admitted into the Ruby Hall Clinic.

30. WHILE the complainant contends that report given by Dr. Wadia of Ruby Hall Clinic and Dr. Sudhir Kothari, Neurophysician and Dr. C. Apte, Pune Institute of Neurology known neurologists support his case and negligence by opposite parties, in particular opposite party No. 3, we find from the records that his contention is factually not correct. In the discharge summary issued by Ruby Hall Clinic (pages 20 -21 of paper book) it has been stated that the patient was admitted and treated for meningitis. He had developed tingling and numbness in right upper and lower limbs for about a week. He was afebrile and conscious oriented and dysarthria. It has also been stated therein that there was nothing abnormal in the sensory system and there were no cerebella signs. Thus the main treatment given by Ruby Hall Clinic was for the treatment of meningitis and the gaped wound during the period he remained hospitalised there. It belies the claim of the complainant that he was taken there in an unconscious condition and remained as such for days together. It also does not refer to any wrong treatment or negligence by the previous hospital.

31. THE other report/certificate on which the complainant has relied upon also do not supported his case. The certificate dated 17th August, 1995 given by Dr. C.S. Apte reads as under: "To Whom so ever it may concern

This is to certify that Mr. Kamlakar Mate is under my treatment from 26.9.1994 for lumbar puncture induced discitis and osteomylitis of L2/3, has been managed conservatively and is doing well."

32. THIS certificate does not state or blame the opposite parties with regard to appendisectomy. It only refers to the treatment given by the Doctor for lumbar puncture induced discitis and osteomylitis of L2/3. It further states that the patient is doing well. Similarly, letter dated 25th April, 1995 (page 24 of the paper book) was given by Dr. Sudhir Kothari to B.L. Deshmukh, the family physician of the complainant who had referred the complainant to him which reads as under: "Dear Dr. Deshmukh

Thank you for referring Mt Mate for my opinion

He has a very unfortunate history.

In July, 1994 he underwent an appendicitis under spinal anaesthesia.

Soon after he developed pyogenic meninigits and was admitted to Ruby Hall where he later developed right hemiparesis and dysarthria, difficulty in speaking and difficulty in writing.

Being a lawyer by profession it is causing him a lot of disability.

33. On examination he is averagely built and nourished. His BP is 130/80 mm of Hg. He is alert and oriented. His memory and insight is preserved. His speech is hesitant and he has a partial motor aphasia, almost like dysarthria. He is also unable to write fast. His comprehension is well preserved though. The fundi are

normal. The eye movements are normal. There is no facial asymmetry. There is minimal spasticity on the right side. Power is almost grade 5 and the reflexes are brisker on the right side. The right plantar is upgoing. There is no sensory impairment. The MRI done then showed a brainstem infarct, due to vasculitis due to the meningitis. Thus he has a residual mild right hameparesis with a dysarthria, a difficulty in writing. These are all a residue of his pyogenic meningitis.

I have explained him that he does not need any drug therapy. I do not really think that speech therapy as such is going to help him much. The simplest and effective speech therapy would be to start going to work and start talking and trying to get past his disability and get rehabilitated"

(emphasis added)

33. IN this communication, Dr. Sudhir Kothari does not refer to any negligence on the part of opposite parties in conducting the appendectomy. He only states that soon after the complainant had undergone the appendicitis on the spinal anaesthesia, he developed piognic meningitis and was admitted to Ruby Hall Clinic where he later developed right hemiperosis and dysthria. This was only a recording of what the complainant told him and his findings. This by no means can be treated to be a clinching evidence that the opposite parties were negligent either in the operation of the complainant or in administering anaethesia.

34. THE theory of indifferent and unethical conduct in not attending to the complaint as promised on the emergency call made by the wife and father of the complainant on the 21st July, 1994, in our view is not worthy of credence. The complainant has not been able to rebut the contention of opposite party No. 3 who is his close relative with regard to true incident on 21st when opposite party No. 3 had indeed tried to do his best to help the complainant. The intervention of Dr. Chavan on the request of opposite party No. 3 who has filed his affidavit cannot be discarded on the mere contention that he is a friend of the opponent. Had he not been a friend or acquaintance of opposite party No. 3 the said Dr. Chavan would not have attended to the complainant at his residence and therefore no adverse inference can be drawn on this contention of the complainant.

35. COMING to the main allegation that the complainant developed meningitis primarily because of the improper/over dose of anaesthesia administered by opposite party No. 3, it has been effectively brought out by the OPs in their reference to the medical literature that meningitis can occur only within 48 hours of an operation and not after many days as is the case here. In support of this contention, the opposite parties have referred to a table showing details of various cases from various medical journals with a specific reference to the relationship between administration of anaesthesia and development of meningitis which is extracted below. As per this table meningitis can occur latest within 48 hours and not thereafter. No Case in short Anaesthesia Presentation

Outcome Reference and comment 01 33 yr. F Spinal anaesthesia Headache 16 hrs. Complete BJA 1991 Urent Lscs Sterile spinal later nausea, recovery Post op. period if Had Genital needle use photophobia 22 meningeal signs Herpes Bupivacaine drug hrs. febrile 39C think of meningitis Urine R Meningismus rare case due to Normal CSF: Turbid inadvertent Pyogenic picture introduction of C/S sterile bacteria in spite of meticulous aseptic precaution. 02 28 yrs. F Spinal anaesthesia Marked headache Complete Anesthesia 1990 manual Disponable spinal 18 years.Later recovery Reasons of removal of and syringes skin pyrexia and meningitis after placenta preparation with shivering spinal or lumbar chlorhexidin and photophobia 24 puncture very spirit hrs. Meningeal debatable. signs muscle Lumbar puncture weakness in 42 can create site of hrs. low resistance to CSF: Turbnid infection allowing pyogenic picture infection to cross into Gum: Stain nothing CSF. Betadine better than chlorhexidine Bacteraemia relative C/I for spinal anaesthesia 03 a>34yr F Spinal + epidural After 21 hrs. BJA 1994 for normal disposable pack throbbing Rare delivery used 2% xylocaine headache. No complication drug fever severe meningitis with headache 27 hrs. recent h/o spinal Spinal + extradural later tingling of right anaesthesia. spinal for LSCS side of face and Commonly arm? Stroke + ve caused by Kernings sign CT unusual or scan normal nosocomial CSF : Proteins (N) organisms sugar pyogenic pyogenic counts. No meningitis even organisms. with extradural block seen i.e. Alright for 48 hrs. with no breach in had post spinal dura. Aseptic/ headache epidural chemical blood patch given. meninigi (1 in b38 yrs. F By 82 hrs. had 400) cause labour vomiting, fever, detergent or analgesia headache and neck disinfectant used followed by stiffness by 90 hrs. to clean spinal LSCS At 96th hr. BP s/o needle. ICT (bradicardia) CSF : Turbid, Pyogenic pict. C/S Staph. Epidemidis CT Scan normal 04 60 yrs M Spinal anasesthesia Chills during blood Improved with Anaesthesialogy Transurethral disposable spinal transfusion (40 antibiotics 1978 clot kit tetracaine with min. after SA) Group D evacuation dextrose as drug without cross streptococci following reaction to BT 2nd unusal aetiology renal stone day - fever 39 c in meningitis removal increase in BP, possibly Headache, organisms were backache, present in CNS confusion. No before spinal meningism. anaesthesia LP LP -2 days later - causes Locus cloudy, increase in Minoris proteins and cell, Resistentiae" in glucose 28 yrs F Epidural 24 hrs. after epi. Complete Anaesthesiology for labour anaesthesia Catheter removal recovery 1989 analgesia Hospital autoclaved headache, neck Blood born set stiffness increased spread from over 12 hrs. later vagina fever 40 c CSF pyogenic picture C/S streptococcus uberis also from blood and vaginal secretions.

36. WHILE the complainant was operated on 2nd July, 1994 he complained of fever and headache only on 16th. The question of meningitis developing after such a long gap, therefore, is to be ruled out. We say so also because as per a study reported in the British Journal of Anaesthesia Vol. 72 February 1994 only 22 cases out of 7,30,000 had meningitis after spinal anaesthesia which in terms of percentage comes to 0.003% -meaning thereby that it is almost not possible that meningitis will develop because of spinal anaesthesia. Thus there is

absolutely no possibility that the complainant would have developed meningitis as a result of spinal anaesthesia. The same literature on Lumbar Puncture Induced Meningitis although states that "if meningitis develops following Lumbar Puncture during bacteraemia, it could be spontaneous (coincidental) or lumbar puncture induced due to leakage of blood containing bacteria into spinal CSF during or after lumbar puncture". It goes on to conclude that if lumbar puncture induced meningitis does occur, it is rare enough to be clinically insignificant.

37. SINCE due care and precautions have been taken by the opposite parties in maintaining an infection free operation theatre and the surgeon has taken adequate care to prevent any infection during the operation and further in the absence of cogent evidence, that the opposite party No. 3 has administered anaesthesia in excess of the required dose or in improper manner, we do not find that there has been any negligence on their part. The development of meningitis, as rightly pointed out is not related or connected to the administration of anaesthesia and in the absence of any expert evidence -to the contrary we believe the contention of that it may have been a case of viral meningo - encephalitis. It is incidental or spontaneous meningitis and has no relation to anaethesia or surgery.

38. IN the case in hand, we also notice that the complainant, despite his request has failed to obtain or file any affidavit from the treating Doctors i.e. Dr. Kothari, Dr. Apte and Dr. Wadia, on whose reports, he has placed reliance to prove his allegations. Even his family physician Dr. Deshpande who was requested to file an affidavit by the complainant has not come forward to give his version. The law by now is well settled that the onus to prove medical negligence lies heavily on the complainant. The complainant in fact should have adduced expert evidence and medical literature to support his allegation which he has failed to do. That his own family physician and treating doctors have not even agreed to file their affidavits goes to show that the complainant has no case. We also fail to understand as to what prompted the complainant to first approach his close relative opposite party No. 3 and after receiving all the attention and support for his treatment of appendicitis turned against him and made these allegations. In this connection, we would like to refer to what the Hon''ble Apex Court has said in such matters. In the case of Jacob Mathew (Dr.) v. State of Punjab and Anr., reported in III (2005) CPJ 9 (SC)=VI (2005) SLT 1=122 (2005) DLT 83 (SC)=III (2005) CCR 9 (SC)=(2005) 6 SCC 1, in para 31, of its judgment has laid down that: "The subject of negligence in the context of the medical profession necessarily calls for treatment with a difference. Several relevant considerations in this regard are found mentioned by Alan Merry and Alexander McCall Smith in their Work Errors, Medicine and the Law (Cambridge University Press, 2001). There is a marked tendency to look for a human actor to blame for an untoward event, a tendency which is closely linked with a desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. To draw a distinction between the blameworthy and the blameless, the notion of mens rea has to be elaborately understood. An empirical study would reveal that the

background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with a medical practitioner and equally it may. The inadequacies of the system, the specific circumstances of the case, the nature of human psychology itself and sheer chance may have combined to produce a result in which the doctor''s contribution is either relatively or completely blameless. The human body and its working is nothing less than a highly complex machine. Coupled with the complexities of medical science, the scope for misimpressions, misgivings and misplaced allegations against the operator i.e. the doctor, cannot be ruled out."

39. THE facts of the case indicate that there is more to the complaint than what has been made out to be for some motive which is not apparent. Thus we find that the complainant has totally failed to substantiate his allegation of medical negligence against the opposite parties. The complaint accordingly is dismissed with no order as to costs. Complaint dismissed.

