(2009) 10 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Kanubhai S. Patel (Dr.) — APPELLANT

Vs

Jethabai Jivabhai Solanki and Anr. — RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Citation : 2009 4 CPJ 226 : 2010 1 UC 432

Hon'ble Judges : J.

Final Decision : Petition dismissed

Judgement

1. PETITIONER was the opposite party No. 1 before the District Forum, where the Respondent No. 1/ complainant had filed a complaint alleging medical negligence on the part of the Petitioner and Respondent No. 2.

2. BRIEFLY stated the facts leading to filing the complaint were that the complainant''s wife was admitted with the Petitioner on 21.9.2001 with severe pain in abdomen, upon which the Petitioner and his wife were advised to come on 22.9.2001 for surgery. Petitioner''s wife was brought to the hospital of the Petitioner on 22.9.2001 at 3 p.m. It was expected to be a small surgery but when the surgery was not completed even after three hours, he went in the operation theatre to know the status of the patient and the surgery, wherein the complainant was told by the Petitioner, that treatment shall continue and he was asked to wait outside. At about 7.30 p.m. Petitioner was told that his wife required some more treatment, hence she is required to be shifted to Sardar Patel Hospital, Ahemdabad, where she was taken in an Ambulance in an unconscious position, where she died on 24.9.2001 at about 9.00 a.m. opposite party No. 2 was an anaesthetist, who administered the dose of anaesthesia in the Hospital. Suspecting negligence on the part of the Opposite parties, a Police report was filed. The post mortem was done and report was obtained. As, according to the complainant, the death was caused by way of negligence on the part of the opposite parties, he filed a complaint before the District Forum, who after hearing the parties, allowed the complaint holding the Petitioner and the Respondent No. 2 guilty of medical negligence, and directed the opposite parties

to pay Rs. 2 lakh jointly and severally, to the complainant, along with interest @ 9% p.a. from the date of filing of complaint till realisation along with compensation of Rs. 2,000 for mental agony and cost of Rs. 2,000. Aggrieved by this order only the Petitioner filed an appeal before the State Commission, who after hearing the parties, dismissed the appeal, hence this revision petition before us. We heard the Learned Counsel for the parties at some length and perused the material on record.

3. WE had repeatedly and specifically directed the Petitioner to file the surgical notes and also to complete the record. Despite this, what has been filed before us are the affidavits and cross -examination of Dr. Jayendra Modi and Dr. Vinayak Rao Patel, who had carried out the post -mortem. This report is on the record.

4. DESPITE repeated adjournments including imposition of costs, yet the Petitioner has not filed the surgical notes. What has been filed, is the notes recorded by the anaesthetist as well as the follow -up action of Dr. S.J. Maitalia, who was brought in as an expert, to advise the Petitioner, keeping in view the deteriorating condition/development of Pulmonary oedema resulting in stoppage of supply of oxygen to the brain of the deceased. It is also equally important to note that despite repeated directions the affidavits by way of evidence filed by the parties has not been brought on record. We see from the para 5 of the order passed by the District Forum that the complainant had been examined, but no such affidavit or examination has been brought on record. In fact, we see the Petitioner has completely failed to bring on record any material in support of his contention that there was no medical negligence. His best defence would have been to file his affidavit by way of evidence in support of his contention which has not been done/which is not on record. Both the lower Fora have upheld the plea of the complainant duly supported by his affidavit/examination which remains unrebutted, that this was a case of medical negligence on the part of the Petitioner and the second Respondent. What has been brought on record are the examination -in -chief and the cross -examination of the two doctors, namely, Dr. Jayendra Modi and Dr. Vinayak Rao Patel, who had carried out the postmortem. The complainant having been ''examined'' would amount to be proving his case with evidence adduced by him, unless rebutted by any affidavit filed by the OPs before the District Forum. Nothing to this effect is not on record, meaning thereby, that the evidence led by the complainant remains unrebutted. The Petitioner has brought on record medical literature with regard to pulmonary oedema. Pulmonary oedema has been explained in following terms: Pulmonary Oedema - -This is persistent breathlessness resulting from, fluid accumulation in the lung as a manifestation of acute left heart failure. The patient, looks and feels unwell, and there is peripheral vasoconstriction and tachycardia. Breathing is rapid and shallow, and there is a persistent cough. Sputum is white and frothy, sometimes tinged with pink. Crepitations are heard on auscultation of the chest, initially at the lung bases, later throughout the lungs. Orthopnoea and paroxysmal nocturnal dyspnoea are transient forms of pulmonary oedema.

5. THE steps taken in case of acute Pulmonary oedema, is also part of the literature, which reads as follows: Acute Pulmonary oedema

This is usually a feature of circulatory failure caused by left -sided cardiac problems. The three initial steps in its management are the administration of:

1. morphine, to alleviate breathlessness and reverse reflex peripheral vasoconstriction

2. a powerful diuretic such as frusemide (40 -80 mg i.v.) both for its diuretic effect and also as a vasodilator,

3. a high concentration of oxygen. If these immediate measures are inadequate, one may try of stimulate the heart using inotropic agents, or to reduce left ventricular load by using more powerful vasodilators.

6. THIS is extracted from literature carrying the heading ''Diseases of the Cardiovascular System". There is no disputing the fact as recorded in the report of the anaesthetist that the pulmonary oedema had set in. The negligence has to be seen in terms of what should have been done as per medical literature or any expert opinion. In this case, medical literature is quite clear as to what steps had to be taken to alleviate or to reverse the effect of pulmonary oedema. When we see the three steps for management of pulmonary oedema as per medical literature above, and when we see the hospital record brought on record, with regard to the treatment actually given to the deceased, we find there is complete mismatch, especially, with regard to third item, i.e., administration of "a high concentration of oxygen". When we see the notes maintained by the anaesthetist as well as the expert Dr. Maitalia, we do not see any high concentration of oxygen being administered to the deceased, leading to unfortunate death of the patient in other hospital. In summarising we find that there is no evidence and rebuttal of the evidence adduced by the complainant before the District Forum, the surgical notes are not there as to what did the Petitioner do when he noted the onset of ''pulmonary oedema'', and lastly they did not follow the procedure prescribed in the medical literature produced by the Petitioner himself.

7. IN the aforementioned circumstances, we see no ground to interfere with the well -reasoned order passed by both the lower Fora. This revision petition has no merit. Dismissed

