

(2011) 02 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

K.M.Madappa

APPELLANT

Vs

President and Members Karnataka State Consumer Redressal
Commission

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 69 : 2011 1 CPJ 236 : 2011 1 CPR 235

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision petition is dismissed

Judgement

1. THE present revision petition has been filed by Dr. K.M. Madappa and Medical Superintendent, M/s J.S.S. Hospital (hereinafter referred to as the Petitioners) being aggrieved by the order of the State Consumer Disputes Redressal Commission, Karnataka (hereinafter referred to as the State Commission) in favour of Shri B.N.Rajesh and others (hereinafter referred to as the Respondents).

2. THE facts of the case are that the Respondent, B.N.Rajesh, was under medical treatment for a kidney stone in the Petitioner/Hospital where he got admitted on 21.02.2002 and an operation was performed on him on 26.02.2002 and a D.J. stent (pipe) was inserted. Three days after the surgery he was asked to undergo an X-ray which indicated that some residual stones still remained in the kidney and, therefore, a second operation was conducted on 05.03.2002. At the time of discharge on 08.03.2002 he was advised follow up visit/check up and, therefore, he visited the Petitioners hospital on 01.04.2002 when he was advised to undergo a urine test. Despite the two surgeries, Respondent continued to have stomach pain and he therefore, met the Petitioner/Doctor on 15.09.2003 who after scanning and X-ray advised a third operation. THE operation was conducted on 26.09.2003 and the Respondent was informed that the pipe had now been removed and he was thereafter discharged on 28.09.2003. However, since the severe stomach pain continued, Respondent went to Sanjo Hospital and after diagnostic tests including X-ray, the specialist in that hospital, Dr.K.S. Venugopal,

conducted an operation on 22.10.2003 during which he removed a pipe that had remained in his stomach. THE Respondent was discharged from the hospital on 25.10.2003 after being fully cured. Respondent thereafter met the Petitioner/Doctor seeking compensation from him for the physical and mental suffering as well as the financial strain that he had undergone at the hands of the Petitioner. Since no heed was paid to this request, he sent a legal notice to which the Petitioner gave an evasive reply. Respondent, therefore, filed a complaint before the District Forum on the grounds of medical negligence, dereliction of duty and deficiency in service. Petitioners in their written submissions before the District Forum denied that there was any medical negligence or dereliction of duty on their part and stated that after insertion of the stent during the operation on 05.03.2002, Respondent was informed that it would need to be removed within six months and he was therefore, advised regular follow up visits which he failed to do. Instead he visited the Petitioner on 15.09.2003 i.e. one and a half year after the first surgery and it was because of the delay on his part that a stone had developed at the lower end of the stent which continued into the ureter. It took nearly two hours of surgery to remove the old stent as there was pus, severe inflammation and bleeding and even thereafter all the stone fragments could not be removed. However, to save the life of the Respondent a new D.J. stent was introduced which could not properly enter the kidney because of the stone fragments in the ureter and right kidney and it was therefore, left in the ureter with the other end in the bladder. Respondent was informed of the situation and told that the new stent would need to be removed within one week. However, Petitioner did not turn up despite this specific advice. Thus, it was because of failure on the part of the Respondent in not approaching the Petitioner in time for removal of the stents following the second surgery which resulted in the complications. The District Forum after hearing both parties rejected the complaint on the ground that the Respondent delayed consultations/check-up with the Petitioner/Doctor by one and a half year and because of this long gap Respondent developed various complications. Therefore, Petitioner had not committed any medical negligence, dereliction of duty or deficiency in service. The complainant was directed to pay the Petitioner/Doctor, Rs.500/- as costs.

Aggrieved by this order, Respondent filed an appeal before the State Commission. The State Commission after hearing both parties, weighing the voluminous evidence produced before it which included both medical records as well as medical literature and also examining the experts, allowed the appeal. The State Commission concluded that the stent was inserted on the Respondent not on 05.03.2002 as stated by the Petitioner but on 26.02.2002 i.e. during the first surgery relying on the X-ray of the Respondent on 02.03.2002 which clearly showed the presence of the stent. The State Commission again on the basis of evidence available concluded that though the Petitioner advised the Respondent during his discharge on 08.03.2002 to come-up for follow-up action, nowhere is it stated in the records of the hospital as to what should be the specific period of

follow up for removal of the stent. It further observed that the Respondent did indeed come for a follow up visit soon after the second operation on 01.04.2002 after which a urine test was done and no further medical advice was given. Regarding the third operation, though the hospital record stated that a stent was placed half way, it does not disclose that after the removal of the old stent a new stent was inserted, nor do the hospital records indicate the advice given to the Respondent that he was required to meet the Petitioner/Doctor for removal of the stent after one week. On the other hand, it has come in evidence that Dr.Venugopal who conducted the fourth remedial operation has stated that after he removed the stent the Respondents condition became satisfactory, thus, indicating clearly that the entire problem of the Respondent was because of the prolonged retention of the stent in the system by the Petitioner. The observation of the State Commission in respect of the third operation reads as under: OP-1 in his version and the evidence has stated that as there was puss, severe inflammation and bleeding from mucosa, all the stones fragments could not be removed and to save the life of the complainant a new Stent was introduced but it did not enter the kidney as there were number of stone fragments in the ureter and right kidney. The Hospital records no doubt state that after the removal of the Stent, the same was placed half way. But the record do not disclose that after removal of the old Stent, a new Stent was inserted. If really the Complainant had been informed to come on a specific date for the purpose of removal of Stent, in all probability he would have approached OP-1. The records of the Hospital do not speak that the Complainant was informed about the date on which he was required to meet OP-1 for removal of Stent. If OP-1 had actually removed the Stent after the third operation, in all probability there was no need for the Complainant to go for the fourth operation. The Complainant has examined Dr.Venugopal who conducted the fourth operation. The said witness has stated in his evidence that he conducted the operation on the Complainant and removed the Stent and the Complainant was getting stomach pain due to the presence of the Stent in the body. He has further stated that after the removal of the Stent, the Complainant was alright. When the Stent itself was the cause for the stomach pain, there was no need for OP-1 to insert another Stent while conducting the third operation. According to OP-1 to save the life of the Complainant a new Stent was introduced but it did not enter the kidney as there were number of stone fragments in the ureter and right kidney and for that reason the stent was left in the ureter with the other end in the bladder. If the case of OP-1 that a new Stent was put were to be accepted, there would not have been any subsequent complications. Even according to OP, he could not insert the Stent properly as there were stone fragments. Therefore, it was for OP-1 to explain the way in which the Stent was inserted during the third operation. In the instant case, OP-1 made the Complainant to undergo four surgeries, though in the normal course one surgery would have served the purpose. In these advanced days, stones from kidney are removed by a simple single surgery. In our view, but for the negligence of OP-1 in conducting the operation, there was no need for the Complainant to undergo the subsequent

three surgeries. Therefore, the District Forum, in our view, has committed an error in dismissing the complaint.

3. THE State Commission while holding the Petitioners guilty of medical negligence and deficiency in service awarded a sum of Rs.1 lakh as compensation to the Respondent to be paid jointly and severally by the Petitioners within two months failing which interest @ 9% per annum would be levied. Petitioners were further directed to pay Rs.5,000/- as costs. THE present revision petition has been filed by the Petitioner challenging this order. Learned counsel for both parties made oral submissions and were heard at length. Learned counsel for Petitioner stated that the Petitioner who was a highly qualified specialist had on the basis of correct medical diagnosis treatment and procedures treated the Respondent to the best of his professional ability and it was because the Respondent who did not adhere to clear medical advice regarding follow up instructions/check up that the stent became infected leading to multiple problems. In fact, he brought to our notice the medical records of the hospital dated 08.03.2002 which clearly stated that the Respondent was asked to come for a follow up review after one week which he failed to do. It is also on record that the risks and complications of the procedure had been explained to the patient in his own language and all these facts were considered by the District Forum which rightly rejected the Respondents complaint. The medical records and the doctors note filed before the learned Fora below clearly indicate that there was no medical negligence or deficiency in service on the part of the Petitioners. Counsel for the Respondent on the other hand stated that it was clear from the records of the case that right from the beginning the Petitioners had not come with clean hands in dealing with this case and had been projecting wrong facts including date on which the stent was inserted, the medical advice given to the Respondent regarding follow up treatment as well as stating that the Respondent did not come for a follow up visit for over one and a half year when he actually came for a visit within three weeks of the second surgery. There is also clear evidence that even during three surgeries fragments of the kidney stones remained whereas these are normally fragmented and disposed of after one single simple surgery. The fact that the stent remained in the system in a festering condition is also because of the negligence of the Petitioners. All these facts are further confirmed when a fourth surgery undertaken by another expert urologist removed the stent and satisfactorily cured the patient.

4. WE have heard learned counsel for both parties and have gone through the evidence on record. From the medical records available on file, it is clear that as observed by the State Commission that D.J. stenting was done on the Respondent during the surgery on 26.02.2002 and not on 05.03.2002. It is further clear that the second operation conducted on 05.03.2002 was, therefore, not to insert the stent as contended by the Petitioner but to remove the residual fragmented kidney stones which remained in the system despite the first surgery and no stent was inserted during this operation as is very clear from the X-ray report cited earlier. It is thus clear that right from the beginning the Petitioner/

Hospitals records did not state the correct facts regarding the patients surgeries and subsequent treatment which is a deficiency, particularly, in a well staffed hospital. Counsel for Petitioner admitted to us that the discrepancy in dates could be a typographical error but we are not convinced because the Petitioner has also sworn an affidavit that the stent was inserted on 05.03.2002. Another discrepancy pertains to the follow up/check-ups. Counsel for Petitioner has wrongly contended that the Respondent did not come for a follow up for one and a half year; in fact he came for a check-up within three weeks of the second surgery and underwent a urine test. WE further find that the State Commission on the basis of facts produced before it has concluded that no specific advice to the Respondent was given regarding the need for removal of stents after the two surgeries and we see no reason to disagree with this observation of the State Commission which is a finding of fact. Even the third operation was clearly botched up with fragments of kidney stones still being retained in the system and a stent which was obviously not required, being inserted in the system. This is clear since the fourth operation by which the stent was removed cured the patient. To sum up, we agree that despite three surgeries the Petitioners failed to treat the ailment of the kidney stones and it was finally treated successfully by another doctor. Counsel for Petitioner has tried to project that Dr.Venugopal who conducted the fourth surgery was only a pediatric surgeon; this is also a mis-statement of facts. Dr.Venugopal has an F.R.C.S. degree and had been specially trained in both adult and pediatric surgery in U.K. Thus, right from the beginning there have been contradictions in respect of the medical facts, medical advice and the treatment given by the Petitioner to the Respondent. It is also clear that none of the three surgeries helped the patient and in fact led to one complication after another. Taking into account all these facts, we agree with the State Commission that the Petitioners are guilty of medical negligence and deficiency in service. The State Commission in its well-reasoned order rightly appreciated these facts and awarded a compensation of Rs.1 Lakh to the Respondent. We uphold the order of the State Commission. The revision petition is dismissed with no order as to costs.