(2016) 10 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

Case No : 800 of 2015

MADHUMITA PODDAR & ANR. — APPELLANT

Vs

DR. RANJANA V. DHANU & ORS. — RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Citation : 2016 4 CPR 428

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Anil Airi, Mritunjay Kr. Tiwari, G. N. Shenoy, Rohit Sharma

Final Decision : Appeal Dismissed

Judgement

"An anembryonic pregnancy (often called a "blighted ovum") occurs during the early stages of pregnancy when a fertilised egg implants in the uterus, but an embryo fails to develop. Only the placenta and membranes develop - fooling the body into believing, it is still pregnant. The pregnancy hormones are still being produced which prevent a miscarriage. In other words, it is a pregnancy loss that happens in very early pregnancy ".

1. The brief facts relevant in this first appeal are that on 12.7.2008, complainant No. 1, Smt. Madhumita Poddar wife of complainant No. 2/Mr. Sudeep Kumar Saha went to OP1/Dr. Ranjana Dhanu for her complaints of nausea with severe cramp in lower abdomen. OP 1 examined her, conducted Urine Pregnancy Test (UPT), it was negative, therefore concluded that complainant No. 1 (hereinafter referred as ''the patient'') was not pregnant. OP 1 diagnosed it as Premenstrual Syndrome (PMS). OP 1 prescribed certain medicines, but the patient had some feeling of pregnancy symptoms. Telephonic consultation on 15.7.2008, OP 1 further advised tablet ''Devery'' for PMS but menstrual cycle did not start upto 15.7.2008. Patient went back to Hyderabad on 21.7.2008 on her employment. Her pregnancy symptoms and uneasiness were further continued. Therefore, on 24.7.2008, she visited Vikram Hospital, Hyderabad and underwent Blood Beta HCG test which confirmed pregnancy of 4 weeks. Thereafter, on 25.7.2008, the complainants consulted Dr. Priyamvada Reddy of Apollo Hospital, Hyderabad

wherein the patient was suggested ''Pelvis Ultra Sonography (Pelvis USG). After seeing the report of USG, Dr. Reddy asked the patient to stop medicines immediately because those medicines were prohibited during pregnancy, which may cause irreparable damage to the fetus. Thereafter, on 27.7.2008 the couple went to their hometown in Kolkata and consulted different doctors, namely, Dr. Ratnabali Chakraborty and thereafter Dr. Ranjit Chakraborty of Woodlands Hospital. Again pelvic USG was conducted there and it was diagnosed as twin pregnancy. Due to confused state of mind and because of knowing the horrifying effects of medicines prescribed by OP 1, the patient again consulted another specialist Dr. Kalyani Mukherji at Kolkata. She also advised medical termination of pregnancy (MTP). The patient took another opinion from Dr. Geetasree Mukherji, who also advised the same. Therefore, the patient got admitted in AMRI Hospital, Kolkata wherein Dr. Gitasree Mukherji performed MTP on 8.8.2008.

2. Claiming the above to be deficiency in service, the complainants filed complaint before Maharashtra State Consumer disputes Redressal Commission, Mumbai for a total compensation of Rs. 1 crore.

3. The State Commission after considering the pleas and evidence dismissed the complaint. Therefore, aggrieved by the impugned order of State Commission, the complainant preferred the first appeal before this Commission.

4. We have heard learned counsel for both the parties. Shri Anil Airi, learned Senior counsel for the complainant vehemently argued the matter. He stressed upon four important dates which are vital in the instant case viz. 4.7.2007, 12.7.2008, 24.7.2008 and 7.8.2008. The patient took consultation on 4.7.2007; there is no single prescription of OP-1 after July, 2007, till 12.7.2008, therefore, the submission made in the written version by OP 1 as "the patient was under her continuous treatment" is false. The prescription dated 12.7.2008 clearly depicts the diagnosis as PMS ++, OP-1 did not advise confirmatory test for pregnancy or -HCG level. Without reason, OP-1 prescribed several medicines which had teratogenic effect on the embryo. The patient purchased and consumed those medicines. In the support of his contention, counsel relied upon the pharmacological insert of the drug Reeshape and medical articles on (i) ''Fluconazole-induced congenital anomalies in three infants, (ii) Overdose of Vitamin A.''

5. The counsel submitted that, on 21.7.2008, the patient had gone to Hyderabad at her employment place. She had persistent symptoms of pregnancy. On 24.7.2008, she underwent blood test for Beta HCG at Vikram Diagnostics, which revealed pregnancy of four weeks gestation. With the said happy news, on 25.7.2008, she along with her husband visited Dr. Priyamvada Reddy of Apollo Health City at Hyderabad, who examined her and suggested for pelvic USG. She also suggested to stop medicines immediately because, those drugs are prohibited during early pregnancy, which may cause immediate damage to the fetus. On 27.7.2008, the couple went to their home town at Kolkata. On

28.7.2008, they consulted Dr. Ratnabali Chakravorty and Ranjit Chakraborti of Woodland Hospital wherein, the USG confirmed twin pregnancy. The patient had strong apprehension and fear about risk in continuation of pregnancy because of consumption of medicines and as per advice of Dr. Priyamvada Reddy at Hyderabad. Infact, patient was not willing for idea of abortion; therefore, she again consulted Dr. Kalyani Mukherjee at Kolkata and Dr. Geetasree Mukherji who also advised MTP. Therefore, on 8.8.2008, Dr. Geetasree Mukherji performed MTP at AMRI Hospital at Kolkata. Because of entire developments, the complainant-1 could not join her duty for 1 1/2 months and her husband was also kept away from his job.

6. Learned counsel, Mr. Rohit Sharma argued on behalf of Lilawati Hospital (OP 3) and submitted that the doctors are working in OP 3 on consultation basis during different time slots. No laboratory investigations of patient were performed in the OP 3/hospital. Therefore, in the instant case, there will not be any liability upon the OP 3.

7. On behalf of Dr. (Ms.) Ranjana Dhanu, OP 2, learned counsel Dr. G. N. Shenoy vehemently argued that this is the case of misconception of the facts and misleading pleadings in the complaint. He initially explained few medical terminologies pertaining to different types of pregnancies like normal, abnormal, the ectopic and anembryonic pregnancy . Also thrown light upon "Viable and Non-viable pregnancy". He further submitted that the patient was a known case of irregular periods and was under treatment of OP 1 since 4.7.2007. The patient approached OP 1 on 12.7.2008. The OP 1 examined the patient and gave her prescription with a diagnosis as a case of PMS++ her LMP was 9.6.2008. The treatment advised as: -

" 1. Forcan 150 mg. HS.

2. Ceftum 500 mg - 2 Tablets Daily for 7 Days

3. Syrup Cital - Tablespoon in glass of water Twice daily for 5 days

4. Pyridim - 3 Capsules Daily for 3 Days

5. Premence - 1 Capsule Daily for 3 Days

6. Primosa 1000 mg - 1 Capsules Daily for 3 months

7. Reshape 120 mg - 2 Capsules Daily (with the meal) For 30 days (to be continued for 4-5 months)

8. Supradyne - 1 tablets daily for 30 days.

9. Macalvit 500 mg - 1 Tablet daily for 30 days."

8. In the same prescription, OP 1 advised for repeat urine test after 7 days. He further submitted that the patient purchased only single dose of Forcan 150 mg. The perusal of prescription and the Chemist Shop cash bill of OP 3, revealed the correctness of submission. Our attention was brought to -HCG report; it was

performed at Vikram Diagnostics, Hyderabad on 24.7.2008. It revealed -HCG level 3840.10 mlU/ml. The normal reference of -HCG at 5-6 week pregnancy is 13860-19600 mIU/ml. Thus, it was much less than normal level to the corresponding gestational age at that time. It was because of an abnormal/ anembryonic pregnancy. Further, attention was drawn to the USG report/ Pregnancy Fetus scan report, which clearly shows as, "an early uterine gestation corresponding to less than 5 weeks, further repeat scan after 2 weeks for viability was advised". There was no evidence of yolk sac and fetal pole .

9. On 29.7.2008, patient went to Kolkata and consulted Dr. Ranjit Chakraborty at Woodland Hospital, therein Trans Vaginal USG (TVS) was performed, it revealed "Anteverted gravid uterus with intra uterine two small gestation sacs of about 9 x 11 x 5 mm and 6 x 9 x 5 mm in the fundus. The sac margins are regular. No obvious fetal pole or yolk sac seen at present." Accordingly, it was pregnancy of 3 to 4 weeks stage. Finally, patient approached Dr. Ranjit Chakraborti on 28.7.2008 at AMRI Hospital. For termination of pregnancy, doctor advised tablet Mifigest 200 mg once after food and Misoprost 200 two tablets after 48 hours for termination of pregnancy. Finally, patient underwent MTP by D & C at AMRI hospital on 8.8.2008. The counsel for OP finally in nutshell submitted that patient took consultation with doctors in Hyderabad and Kolkatta, patient had knowledge of non-viable pregnancy. She left with only choice for MTP either by medication or by D & C. Therefore, the patient on her own volition opted for termination of abnormal pregnancy. As such, it would have automatically got aborted as a natural course.

10. Perusal of medical record like prescriptions, USG and laboratory investigations, it is an admitted fact that, on 3.7.2007 OP 1 diagnosed her as PID (Pelvic Inflammatory disease), UTI, Endometriosis and PMS (Premenstrual syndrome). In the same prescription, OP 1 advised serum -HCG, prolactin, CBC, urine and culture sensitivity. The OP 1 advised medication in the said prescription. We have noted one receipt of consultation dated 04.02.2008, that patient approached OP 1 for consultation. Thus, it proves that the patient was under periodic/regular consultation of OP 1 since July, 2007. As per the submission of counsel for OP, that only blank investigation requisition was given to patient. It should be borne in mind that tick marked laboratory requisition form will be in the possession of concerned laboratory where the patient undergoes the tests. Therefore, we don''t find any relevance for non-production of original laboratory requisition form. It is pertinent to note that the patient approached Vikram Laboratory in Hyderabad and got conducted blood tests. The laboratory report, clearly shows, the patient was referred by Dr. Ranjana Dhanu i.e. OP 1.

11. On the basis of USG and her LMP (Last Menstrual Period), the duration of pregnancy was 5 to 6 weeks. The normal/actual range of HCG during 6 th week of pregnancy should be 13862-19600 mlU, but it was very less (3840 mlU) on the patient. It is pertinent to note that, laboratory and USG investigations, which

patient underwent in Hyderabad and Kolkata ,it is proved that it was anembryonic pregnancy. Even the USG report dated 25.7.2008 of Apollo Hospital, further confirms that there was no evidence of yolk sac and fetal pole and the gestation was less than 5 th week. The prescription of Dr. P. Reddy clearly recorded that " she (patient) does not want to continue pregnancy ". Also, the prescription of Woodland Medical Centre, Kolkata given by Dr. Ranjit Chakrabotry, expressed the doubt about foetal viability; as it has not yet been confirmed. Dr. Ranjit Chakraborty advised the patient for termination of pregnancy (MTP) either by Medical Method or by surgical intervention by D & C.

12. In our view, it appears that the complainants misunderstood the facts about pregnancy. In addition, the initial prescription of OP 1 and her multiple consultations with doctors in Hyderabad and Kolkata, the complainant was in dilemma and confusion. The complaint was filed on wrong premise and the pleadings are intelligently drafted to mislead to the court. The translation shows omission of crucial words e.g "HS". The complainants tried to make brick without straw.

13. As per literature, the medicines prescribed by OP 1 are not harmful to the patient; those were prescribed by clinical acumen. It consists of vitamins, antibiotics. The side effects or alleged teratogenic effect will not be obvious by a single dose. On the basis of foregoing discussion, we are of the view that it was an anembryonic pregnancy. Anembryonic pregnancy is a form of a failed early pregnancy, where a gestational sac (a blastocyst) develops, but the fetal pole/ embryo never develops. The term "blighted ovum" is synonymous with this. Therefore, we do not find OP 1 deviated from the standard obstetric practice. There was no deficiency in service. OP 1 prescribed medicines which are routinely advised in early pregnancy or in the cases of PMS. Those medicines directly will not cause for an anembryonic pregnancy.

14. We do not find any merit in the instant appeal, which needs any interference in the well-reasoned order of the State Commission. Hence, the appeal is dismissed.

