(2015) 08 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

Case No : 662 of 2015

MANAGER, SAINT FRANCIS HOSPITAL — APPELLANT

Vs

KAMLA & ANR — RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:
Consumer Protection Act, 1986, Section 16(1)(1B)(i) - Composition of the State Commission

Citation : 2016 1 ALD 7

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : A. P. Dhamija, J. P. Singh, L. K. Nepalia, Shyam Moorjani, R. K. Sharma

Judgement

1. This order shall decide above said two revision petitions. The facts are taken from Revision Petition No. 662 of 2015.

2. On 25.2.2011, Dr. L. K. Nepalia, an Eye Surgeon (OP-1) performed cataract surgery on the left eye of the complainant, Smt. Kamla in St. Francis Hospital, Ajmer/OP-2 and discharged the complainant on next day. On 28.2.2011, during follow-up, she complained of pain in her operated eye, the OP 1 prescribed medicines. Thereafter, till 18.4.2011, complainant visited OP-1 on several times, coming all the way from Pali. On each occasion, she complained of pain and loss of vision, in her operated eye. The OP 1 prescribed routine medicines and assured the complainant that she would be normal, soon. The OP-1 told her not to come all the way from Pali, but consult Dr. Pradeep Maheshwari of District Pali itself, still there was no improvement. At the insistence of complainant, the OP-1 referred her to Dr. Raj Kumar Sharma at Jaipur ; but she consulted at ASG Hospital at Jodhpur, who told her that during Cataract surgery, the implanted lens had been detached/dislocated. She underwent another surgery at ASG hospital, where she incurred further expenses of Rs.33,000/-.

3. Therefore, alleging negligence on the part of OP, she filed a consumer complaint before District Forum, Ajmer. The District Forum dismissed the

complaint. The complainant filed first appeal before the State Commission, which was allowed, with the order that OP shall pay cost of Rs.33,000/- incurred for second surgery, conducted at ASG Hospital plus cost of medicines, tests, other expenses totaling Rs.15,000/-. The complainant is also entitled to receive compensation for medical negligence which is fixed at Rs.1, 00,000/- and also pay Rs.21, 000/- as cost of litigation.

4. Aggrieved by the order of State Commission, both the OPs filed two separate revision petitions.

5. At the admission stage, learned counsel for the petitioners were present and argued the matter. The learned counsel for the OP-2 hospital submitted that, OP 2 is a Missionary Charitable Hospital and OP 1 is an Eye Surgeon, retired as a Senior Professor from Jawaharlal Nehru Medical College, Ajmer, who attends the hospital. Thus, OP-1 is not in employment with OP-2. The hospital provides only infrastructure for running OPD and other services, as required by the doctors. The operation was conducted by OP 1. Therefore, there was no negligence on the part of hospital. The patient never visited the hospital after 18.4.2011. The learned counsel for Dr. L. K. Nepalia argued that the State Commission came to the conclusion on imaginary basis and on the presumptions, OP-1 properly treated the patient, cataract operation was uneventful. During each follow-up visit, OP-1 examined the patient and advised medicines. There was no dislocation of the IOL. The dislocation was noted, only on 18.4.2011, upon which, he advised another operation but, the patient never turned-up to him and got operated somewhere else. Therefore, there was no negligence by the OP 1 during the treatment and advice. Learned counsel for the OP/Dr. L. K. Nepalia submitted that the patient''s eye was operated for the cataract. The patient was called for follow up. There was no abnormality. Hence, only medicines were described. On 18.4.2011, he noted the displacement of lens and accordingly advised the patient to consult Retina Surgeon at higher center. The bad condition of the eye may be due to rubbing of the eye.

6. We have perused the medical records available on file. To overcome this controversy, we have requisitioned the record form the District forum. It showed that the patient visited OP 1 on 28.2.2011, 3.3.2011, 7.3.2011, 17.3.2011, 31.3.2011 and 18.4.2011 about eight times. Every time, the doctor prescribed only eye drops and tablets.

7. On the file of revision petition We have noted some writing on the discharge summary below the name as under:

"Tension 12.2 both eye

IOL left eye in vitreous

Adv.

VITRECTOMY, EXPLANATION with

SECONDARY IOL UNDER EXPLAINED

PROGNOSIS ON 18/4/2011."

Surprisingly, the said entry is conspicuously missing on the discharge summary record on District Forum''s file. Thus, it was a deliberate attempt of insertion.

8. We have noted two payment receipts showing the hospitalization charges as Rs.5,000/-, consultation and registration charges of Rs.1,00/- Therefore, certainly, it was not a free service. Secondly, the discharge summary did not show any clinical or treatment details, during follow-up. Nothing was mentioned about condition of eye. Therefore, under these circumstances, it is difficult to fathom what advice and mode of treatment OP-1 adopted during post cataract follow up. Therefore, we are of considered view that, OP-1 had just prescribed eye drops and medicines, without checking the patient''s complaints. This amounts to negligence, inaction and passivity of OP 1/doctor. Hence, OP 1 was negligent; consequently the hospital is vicariously liable. This view finds support from various judgments of Supreme Court.

9. The counsel for OP argued that the order of State Commission was signed by single member, hence not tenable under Consumer Protection Act, 1986 and the Rules of Rajasthan Consumer Protection Act. In his support, he produced the judgment of this Commission in revision petition No. 2065 of 1999, but, it was prior to the amendment of CP Act. Section 16 (1) (1B) (i) of the Consumer Protection Act, 1986, is reproduced, as below: "16(1) (1B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President, with one or more members, as the President may deem fit.

10. Therefore, in the instant case, there was no illegality, if the bench at State Commission was presided by Single member .

11. Medical Negligence had been discussed in the English Courts which was followed and approved by the Indian Courts also. In Laxman v. Trimbak, AIR 1969 SC 128 Hon''ble Supreme Court held thus (Para II): "The duties which a doctor owes to his patent are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patent owes him certain duties viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must being to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law required: (cf. Halsbury''s Laws of England, 3rd Ed. Vol. 26, p. 17)"

12. In conclusion, the OP''s follow up treatment was just in a casual manner, the clinical notes did not mention about medicines or condition of patient. Also, there is clear cut insertion made by OP-1, on the discharge summary. Therefore, we hold the OP 1 and OP 2, i.e. doctor and Hospital, respectively liable for this Act. On the basis of forgoing discussion, we do not find any substance to interfere with the order of the State Commission. Hence, both the revision petitions are dismissed.

