

(2002) 06 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

MANJIT SINGH SANDHU

APPELLANT

Vs

UDAY KANT THAKUR

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Citation : 2002 3 CLT 405 : 2002 3 CPJ 242

Hon'ble Judges : S.N.Mishra , S.Hansda , Sumitra Kumari J.

Final Decision : Appeal allowed

Judgement

1. THIS is one of the unfortunate cases of a young boy died after operation consequent upon the alleged negligence of the appellant in course of operation of the stomach of the patient which reason is vigorously and seriously challenged, but at the same time stoutly denied by other side.

2. THE opposite party in complaint case No. 157/1998 on the file of the District Forum, Dhanbad is the appellant before us, who has challenged the legality and validity of the order dated 21.9.2001 passed by the District Forum, Dhanbad, whereby the appellant has been directed to pay a sum of Rs. 3 lakhs by way of compensation to the complainant/respondent. Shortly stated the case of the complainant is that the appellant running a Nursing Home, known as Popular Nursing Home, Toraphatak Road, Dhanbad. It is alleged that the son of the complainant was admitted in April, 1998 with a simple complaint of pain in his abdomen. The appellant being a Surgeon, has examined the patient and opined that there has been obstruction in his abdomen due to intestinal knot. On instruction, the patient was first operated upon on 4.4.1998, but inspite of the operation, the condition of the patient did not improve and, accordingly, the second operation was performed on 16.6.1998 since the stool was coming out from the very place where operation was conducted. It is alleged that there was third hole in the small intestine, which was not closed at the time of first operation due to negligence and laches on the part of the appellant. It is alleged that the complainant had to pay about Rs. 84,000/- for operation including other charges. It is alleged that the petitioner remained in the Nursing Home of the

appellant w.e.f. 2.4.1998 to 27.6.1998 and during this period, the condition of the patient started deteriorating. On the allegation aforesaid, the complaint petition was filed against the appellant on 7.7.1998 claiming compensation to the tune of Rs. 98,758.30 ps. During the pendency of the said complaint petition, the complainant's son died on 5.10.1998. Accordingly, the amendment petition was filed claiming a compensation of Rs. 5 lakhs against the appellant.

The appellant appeared before the learned District Forum and filed written statement, stating therein that the complainant's son Sanjiv Kumar Thakur aged about 25 years was admitted in Nursing Home with a complaint of abdominal pain. Accordingly, necessary pathological test was conducted and the patient was diagnosed and, ultimately, it was found that the patient having stoute intestinal obstruction and, after taking due care, the operation was done on 4.4.1998. It is alleged that the anaesthetic administered GA-by gas and muscle relaxent by boil's machine and pules, blood pressure, respiration and oxygen, saturation was monitored by pulse oximeter. It is further alleged that the surgical team of 3 doctors and 2 Assistant Surgeons performed the surgery, Abdomen was opened, when it was found that 2 feet of small intestine was gangrene and lot of pus and faecal smell. The intestine became gangrene due to delay and consumption of food in a case of acute intestinal obstruction. All gangrenous intestine was removed and healthy intestine was anastomosed. An ileotransverse anastomeous was also conducted to relieve this anastomosis. Abdomen was thoroughly washed and cleaned with saline and ultimately closed with drain. It is alleged that during the operation there was extreme foul smell in the operation theatre resulting every body present in the operation theatre felt nause. It is alleged that nosimisim fan was used for 2 days in order to remove foul smell and as such the surgery could be done for 2 days. It is further alleged that the patient, thereafter, came in sense and passed stool on third day, that is on 7.4.1998. However, on 7th day of the operation the patient started passing pus from his wound. Simultaneously, a Senior Surgeon, Dr. A. Mitra, Chief Surgeon at Central Hospital, Dhanbad was called for to examine the case and see the patient. The wound, thereafter, started healing and the attendants of the patient expressed their desire to go home and requested further dressing at home itself. Accordingly, a Compounder, Mr. Umesh Kumar was deputed for the purpose of dressing at the patient's home daily. It was also alleged that at the request of the complainant, 20% charges were deducted in bill. Ultimately, the patient was discharged on 4.5.1998.

3. ACCORDING to the appellant, after gap of three weeks, the patient was again admitted on 31.5.1998, since he was discharging pus followed by high temperature. After careful examination of the patient, it was decided to re-operate since the pus was coming out from the wound. At the request of the complainant, the Senior Surgeon, namely, Sri A. Mitra was called for and on his advice, the stomach was again re-opened on 10.6.1998 when it was found that the pus was coming from small hole in small intestine. The hole was accordingly repaired and abdomen was closed. The patient had almost recovered. The

complainant again made a request for dressing the patient at home, accordingly he was discharged from Nursing Home on 27.6.1998. It is further alleged that the entire cost of second operation including medicines, saline and anaesthetic charge including Dr. Mitra's fee of Rs. 2,000/- were borne by the appellant himself. The said compounder was again dressing the patient at his home daily. It is further alleged that the complainant shifted his son in Shadar Hospital, Dhanbad on 27.7.1998 where he was being treated by one Dr. M.P. Jha, who was also of the view that the wound was healing and, as such, no further surgery is needed. The learned District Forum, on consideration of the pleadings of the party has passed the impugned order which is under challenge in this appeal as stated above. The appellant has challenged the judgment and order of the Court below and submits that he was not, in any way, negligent either at pre or post operation period. Nor, he was in any way negligent, while operating the patient. Coming of pus from intestine was not on account of any laches or negligence on the part of the appellant in the treatment of the patient or on account of any faulty procedure adopted while operating the patient. According to the petitioner, the impugned order has been passed without application of judicial mind inasmuch as not an iota of evidence has been brought on record to establish the allegation of negligence or deficiency in service on the part of the appellant. According to the learned Counsel, all possible steps have been taken during the pre and post operation period in consultation with highly skilled and efficient surgeon and, as such, the appellant cannot be held liable for the death of the patient.

4. IN opposition, however, the learned Counsel has supported the order passed by the District Forum, and submits that it is because of the deficiency in service of the appellant, the second operation was to be performed. It is submitted that had there been successful first operation, the second operation could not have been performed. In the light of the rival submission, it has to be seen as to whether there has been laches and/or negligence on the part of the appellant at the pre and post operation period or even during the period while the patient was in his Nursing Home. Record of the case goes to show that the operation of the patient was conducted after necessary pathological tests, the patient was admittedly suffering from acute pain in the abdomen when the stomach was opened. It was found that there has been knot in the intestine, as a result, stool was not passing. The appellant with the help of three Surgeons performed the operation. After operation, the patient was shifted to his home at the request of the complainant where the dressing was being done by the compounder deputed by the appellant. It appears that while the patient was at home, pus was coming out, as a result, he was again brought out to the Nursing Home and, after having consulted Senior Surgeon, namely, Dr. A. Mitra, second operation was done in order to close the hole from where the pus was coming. Patient was again brought to his home where the dressing was being done by the same compounder. No doubt, the condition of the patient has started deteriorating. This time, the complainant instead of going to the appellant, the patient was

being treated by Dr. Mitra, who is Senior Surgeon. He himself examined the patient and nothing wrong was found either in the first or second operation. However, the condition of the patient started deteriorating, as a result, he was brought to the Sadar Hospital, Dhanbad, where the patient was being treated by one Dr. M.P. Jha. He had also not found any irregularity in treatment both at pre and post operation period. There is nothing on the record to suggest that there has been any negligence and/or deficiency in service on the part of the appellant except the oral submission of the respondent/complainant. In such cases before coming to a positive finding, there must be an expert evidence on record as has been held both by the National Commission as well as the Apex Court. At present, I am not in a position to lay my hand on such decision. In such cases, the Court is not supported to act upon mere allegation and counter allegation in absence of the expert report. Admittedly, no expert report either has been called for or has been brought on record by the complainant. According to the complainant, the first operation was not successful as alleged by the complainant even then, the negligence and/or deficiency in service cannot be presumed. The operation may be successful may not be, that depends upon various factors including the nature and complexity of the disease. Merely because, the operation was not successful, the appellant cannot be held, in any way, responsible for such unsuccessful operation. The patient died in the Sadar Hospital. In the circumstances, therefore, it is difficult to hold that the patient died due to deficiency in service on the part of the appellant, particularly, when there is no positive evidence either oral or documentary on the record. Every day, the patients are dying in operation theatre but in absence of positive and expert evidence, it would be unsafe to hold the operating Surgeon responsible for the death of the patient.

5. THE learned Counsel for the respondents, however, lastly submits that the appellant is not fully qualified to perform such operation as he is Ortho Surgeon. Nothing has been brought on record to show that the appellant is not a qualified Surgeon. On the contrary, the appellant has produced certificate of different Medical Institutions in order to show that he is a qualified General Surgeon and competent to perform such operation. It is true that skill and performance of Medical Practitioners differs from doctor to doctor. I am supported by a decision in the case of Achutrao Haribhau Khodwa v. State of Maharashtra & Ors., reported in I (1996) CLT 532 (SC)=1996 (2) SCC page 634, wherein, it has been held as follows : "THE skill of medical practitioners differs from doctor to doctor. THE very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as doctor acts in a manner which is acceptable to the medical profession and the Court finds that he has attended on the patient with due care, skill and diligence and the ailment, it would be difficult

to hold the doctor to be guilty of negligence."

6. IN the light of the discussion made above, I find that the complainant/respondent was not able to establish his case of negligence on the part of the appellant. Accordingly, the judgment and order impugned passed in the aforesaid complaint case is hereby set aside and consequently this appeal is allowed. However, there shall be no order as to cost. Appeal allowed.