(2010) 10 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Master Ishant Sood — APPELLANT

Vs

ALL INDIA INSTITUTE OF MEDICAL SCIENCES — RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : 2010 4 CPJ 404

Hon'ble Judges : S.K.Gupta , K.S.Naik J.

Final Decision : Complaint dismissed.

Judgement

1. COMPLAINANT Nos. 2, 3 are the parents of complainant No. 1, a minor. Complaint was jointly filed by them impleading All India Institute of Medical Sciences as opposite party No. 1, State of NCT of Delhi as opposite party No. 2, Dr. Anil Bhan as opposite party No. 3 and Dr. A. Panda as opposite party No. 4 inter alia, alleging that the complainant No. 1 was born on 4.6.1997 with the heart disease of congenital cyanotic, luminary blood flow, TGA with intact IVS with small ASP. On 9.7.1997, complainant No. 1 was admitted in opposite party No. 1-hospital for treatment. On 12.7.1997, amount of Rs. 50,500 as demanded, was deposited by complainant No. 2 with opposite party No. 1-hospital towards expenses of surgery. Opposite party No. 3-Dr. Anil Bhan and his team conducted the surgery of complainant No. 1 on 12.7.1997. It was further alleged that during the period the complainant No. 1 was under the care of opposite party No. 3, he developed dried eye and corneal ulcer in the right eye. He was not having this problem before he was admitted in hospital. Complainant Nos. 2, 3 were assured that complainant No. 1 would be provided in-house treatment during hospitalization. Said problem in the eye was developed as the eyes of complainant No. 1 were not closed by the nurses/doctors at the time the surgery was conducted. Complainant No. 1 was attended for treatment of right eye for the first time on 31.7.1997. He was discharged from opposite party No. 1-hospital on 7.8.1997 with the advice to attend the OPD in R.P. Eye Centre. The opposite parties kept on assuring the complainants that the right eye of complainant No. 1 will be set right by corneal grafting. However, on 16.4.1998 the opposite parties declared that the eye of the complainant No. 1 had been

totally damaged beyond repair. Complainant No. 1 lost his right eye due to the negligence on the part of opposite party No. 1-hospital and the consulting doctors. Direction was sought to be made to the opposite parties to pay a total amount of Rs. 36,00,500 by way of compensation as detailed in para No. 15 of the complaint.

2. VIDE order dated 18.3.2004 the name of opposite party No. 2 was allowed to be deleted from the array of parties. Opposite party No. 3 was proceeded ex parte by the order dated 29.8.08.

3. OPPOSITE party Nos. 1, 4 contested the complaint by filing a joint written version. It was not disputed that complainant No. 2 was asked to deposit Rs. 50,500 by opposite party No. 1-hospital and the surgery on complainant No. 1 for heart problem was performed by opposite party No. 3 on 12.7.1997. However, it was alleged that no amount whatsoever is charged by opposite party No. 1-hospital for the services rendered in the hospital. Amount taken from the patients is utilised for meeting the cost of consumables either used on the body of patients or in the procedure which cannot partake the character of consideration and opposite party No. 1-hospital and its doctors are outside the purview of Consumer Protection Act, 1986 (for short ''the Act''). Present complaint is, therefore, not maintainable. It was denied that complainant No. 1 suffered the eye ailment due to alleged exposure to light. It was stated that the eyes of the patients are invariably properly closed by putting gauge/tapes at the time of surgery which process was also followed in this case. It was pleaded that the loss of eye was caused by malnutrition. Soon after the eye ailment was detected the treatment was started on 20.7.1997. Complainant No. 1 was given Vitamin-A besides other medicines. Best treatment that could be provided under that situation was provided to complainant No. 1. Surgery of the right eye could not be performed due to very poor prognosis of complainant No. 1. It was only because of timely and appropriate medical therapy that the left eye of complainant No. 1 could be saved. Opposite party No. 3 is no more in the service of opposite party No. 1-hospital. Complainant No. 1 was examined by ophthalmologists and pediatricians. Claim made is exaggerated. Denying negligence the liability to pay the amount claimed was denied.

4. IN support of the complaint, affidavit of complainant No. 2 was filed. Complainants also served interrogatories which were answered by opposite party No. 4 whose affidavit was filed by way of evidence on his behalf and on behalf of opposite party No. 1.

5. COMPLAINANTS allege deficiency in service on the part of the opposite parties mainly on the grounds of there being delay in starting treatment of eye ailment of complainant No. 1 and the eyes of complainant No. 1 having remained open for considerably long period during the surgery performed by opposite party No. 3. Treatment is alleged to have been started on 31.7.1997. Heavy reliance has been placed by Mr. Gagan Gupta for the complainants on the discharge summary (Exh.PW1/4) wherein it is mentioned "developed exposure keratitis and corneal

ulcer. Subsequently the lens got extended". On the other hand, denying the allegation of delay in starting treatment of the eyes, Mr. Mukul Gupta for the contesting opposite parties has submitted that treatment was started on 20.7.1997 immediately after the ailment in eyes was detected. The eyes of complainant No. 1 had been closed before the surgery commenced by opposite party No. 3 on 12.7.1997. Some of the paras of the affidavit filed by way of evidence of Dr. Prof. Anita Panda-OP No. 4 are relevant. In para No. 1, it is averred that the procedure called TAPVC was carried on complainant No. 1 by OP No. 3. In para No. 2, it is averred that complainant No. 1 was suffering from malnutrition while he was in the womb and such malnutished children usually have associated Xerosis and Xeropthalmia and their eyes are more prone to infection which is difficult to control and finally it leads to loss of any eye. In para No. 4, it is stated that on later follow ups on 11.9.1997, the healing was noted and complainant No. 1 was registered for future Corneal transplant "Keratoplasty" in urgent category. Later on 6.10.1997, the eye was found to be shrinking which resulted into poor prognosis of the right eye. Eye bank sent a letter dated 12.3.1998 as the complainant No. 1 was already registered for evaluation and transplant. However, on visit on 16.4.1998, the eye examination revealed that it was not fit for surgery. In para No. 5, it is mentioned that the ailment was as a consequence of malnutrition and not by the alleged exposure. In para No. 6, it is stated that as soon as the ailment in eye was detected on 20.7.1997, proper treatment was started after due investigation on the same date. Reference was sent for the Opthalmologist. Senior Resident Opthalmology immediately on 20.7.1997 attended complainant No. 1 and after examination detected the same to be corneal infiltration and prescribed antibiotics. Thereafter, medicines Norflox, Natamycin, (H.A.) Homatropine were regularly applied on complainant No. 1 and he was being examined regularly by the Opthalmologists. Copy of the consultation record dated 20.7.1997 is Exh. OP/1. In para Nos. 7 and 8, it is further stated that on 25.7.1997 the medicines were changed and stronger medicines were prescribed and tear supplementation was increased and consultation document dated 25.7.1997 is Exh. OP/2. On 30.7.1997, the attending doctor noticed that the lens of the eye had got extruded. The left eye also showed signs of dryness. The Opthalmologist immediately attended complainant No. 1 and found that the right eye had sloughed out cornea with perforated corneal ulcer and the left eye was diagnosed as conjunctional Xerosis. In para No. 12, it is averred that the treatment continued and the only treatment that could be provided under the situation was provided to complainant No. 1 which was well accepted and acknowledged treatment. In para No. 13, it is stated that the condition of the eyes of the complainant was due to nutritional deficiency resulting in general malnutrition and especially deficiency of Vitamin A whose high dosages were given to complainant No. 1 to prevent further damage and complication. In para No. 18, it is stated that Keratomalcia is irreversible and can cause permanent corneal scarring. In para No. 21, it is stated that the eyes of the patients irrespective of age before administering anesthesia for performing surgery are invariably properly closed by putting gauge/tapes at the time of

surgery which process was followed with complainant No. 1 as well. Document (Exh. OP/1) shows that complainant No. 1 was prepared for surgery by applying antiseptic paint and thereafter properly drapped. At this juncture, relevant interrogatories and the answers thereto given by OP No. 4 need to be noticed. In reply to interrogatories 1 and 2, OP No. 4 stated that the complainant No. 1 was suffering from Total Anomalous Pulmonary Venous Connection (TAPVC) and was brought to AIIM with congestive Heart Failure and Chest Infection and not for malnutrition; it is not possible to diagnose Vitamin A deficiency in advance and Vitamin A deficiency cannot be ascertained by clinical examination in a normal person. In reply to interrogatories No. 6, it was stated that complainant No. 1 was brought to AIIMS on 9.7.2007 and was operated on 12.7.1997 and Vitamin A was prescribed at the earliest only as a measure of support and it would not have cured the ailment. Interrogatory No. 24 and the reply thereto read thus: "24. Is it not correct that on page 2 of the discharge summary (Exhibit No. PW1/4) it is clearly mentioned "developed exposure keratitis and comeal ulcer. Subsequently, the lens got extended" does the "exposure keratitis" mean malnutrition? If it does not mean malnutrition, then what does it mean? Reply-"There is a distinction between an ailment and the cause of the ailment. Corneal Ulcer is the ailment but the malnutrition or the Exposure Keratitis may be the cause for such ailment. In the case of the claimant malnutrition is the apparent cause for such ailment, but the noting of the Cardiac Surgeon about Exposure Keratitis appears to be based on general impression who prepared the discharge summary and not on the basis of the diagnosis and the treatment. Comeal Ulcer can also be due to malnutrition which is one of the major sources in the cases of TAVPC and/or due to Exposure Keratitis."

In aforesaid surgical notes (Exh. OP/8) against the Col. ''Procedure'' it is, inter-alia, stated that GA Antiseptic painting & drapping.

6. COMING to delay, from the affidavit of OP No. 4 and Exhibited treatment record filed therewith, it is proved beyond any shadow of doubt that the treatment for eye ailment of complainant No. 1 was started as soon as it was detected on 20.7.1997. Case of the complainants that treatment was commenced on 31.7.1997 is untrue. There was no delay in providing treatment to complainant No. 1 as alleged.

7. AS regards alleged another deficiency in service referred to above, in para No. 11 of the complaint, it is alleged that complainant Nos. 2 and 3 were informed by the opposite parties-doctors that the eye trouble had developed as the eyes had remained open for a considerably long duration during surgery. Names of the doctors who informed these complainants to that effect, have not been disclosed either in said para No. 11 or in any other para of the complaint or even in the affidavit of complainant No. 2 filed by way of evidence. Needless to repeat that in surgical notes (Exh. OP/9) against the Col. of ''Procedure'' it is mentioned that GA Antiseptic painting and drapping. In para No. 21 of the affidavit filed by OP No. 4, it is averred that the eyes of the patient irrespective of age before

administering anesthesia for performing surgery are invariably properly closed by putting gauge/tapes at the time of surgery which course was also adopted in the case of complainant No. 1. Genuineness of the surgical notes cannot be doubted. Neither complainant No. 2 or 3 were present inside the operation theatre at the time the surgery was performed by OP No. 3. In view of the said evidence bald allegation of the complainants about the eyes of complainant No. 1 having not been closed at the time of surgery on 12.7.1997 cannot be accepted. In Taber''s Cyclopedic Medical Dictionary, Edition 18 ''keratitis'' is defined as - inflammation of the cornea, which is usually associated with decreased visual acuity." Exposure to Keratitis as mentioned in the said Discharge Summary would not imply that the eyes of complainant No. 1 being open were exposed to light during surgery on 12.7.1997 as alleged. Extracts from the articles MoonDragon''s Health and Wellness-Eye Disorders and Problems Xerophthalmia (Exh. OP/6) and Vitamin A deficiency and the prevalence of Xerophthalmia in Southern Rwanda (Exh. OP/7) produced by the contesting opposite parties support their stand that the said disease in the right eye of complainant No. 1 was due to malnutrition and the treatment provided was well accepted and acknowledged treatment. From the foregoing discussion, it must follow that the complainants have miserably failed to make out a case of deficiency in service on the part of the opposite parties.

8. IN view of the said finding, the issue of applicability/non-applicability of the provisions of the Act to AIIMS-OP No. 1 is left open for being decided in an appropriate case.

9. CONSEQUENTLY, the complaint is dismissed being without any merit. No orders as to cost. Complaint dismissed.

