

(2013) 08 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Mohanbhai S. Patel Navjeevan Maternity Hospital Opp.
Chaturbhuj Baug Patan

APPELLANT

Vs

Thakkar Baldevbhai Keshavlal

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 607

Hon'ble Judges : VINEETA RAI , VINAY KUMAR J.

Advocate : ASHUTOSH KUMAR , SUMEET BHATIA , P.K.MANO HAR

Judgement

1. THIS First Appeal has been filed by Dr. Mohanbhai S. Patel, Opposite Party No.1 before the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (hereinafter referred to as the State Commission) and Appellant herein being aggrieved by the order of that Commission which had partly allowed the complaint of medical negligence filed against him and others by Thakkar Baldevbhai Keshavlal, Original Complainant No.1 before the State Commission and Respondent No.1 herein and others (his minor children).

2. FACTS : In his complaint before the State Commission, Thakkar Baldevbhai Keshavlal (Respondent/Complainant) had stated that he had taken his wife Gitaben (hereinafter referred to as the Patient) on 06.05.1997 for a medical check-up from his village Harij to Patan as she was having irregular menstruation and pain in the uterus. She was examined by Dr. Mohanbhai S. Patel (Appellant) at Navjeevan Maternity Home, who advised an x-ray and sonography and on the basis of that report informed that Patient was three months " pregnant and that D&C procedure was required to be conducted. Respondent/Complainant told Appellant that whatever was required may be done in the interest of the Patient "s health and thereafter a D&C procedure was conducted on 06.05.1997 and Patient was prescribed some medicines. After the operation was over at about 4.00 p.m., Patient again continued to complain of severe pain and Respondent/Complainant was informed by Appellant that this was normal following such an operation and there was no reason for worry. Respondent/Complainant and

Patient remained in the Maternity Home till about 8.30 p.m. after which Appellant advised that she may be taken back to their village in Harij after paying Rs.450/- as fees. On 07.05.1997 at about 3.00 a.m. Patient again felt severe pain and took pain killers. However, since the pain continued, a local doctor (Dr. Bhagwandas Patel) was called, who had in the first place referred the Patient to Appellant and who after examining the Patient told Respondent/Complainant that the uterus of the Patient had been punctured and, therefore, it was necessary to take her back to Patan for treatment. A referral letter was also given by Dr. Bhagwandas Patel for Appellant. Appellant again prescribed some medicines to Patient but her health continued to deteriorate and, therefore, Appellant sought the help of two other Doctors i.e. Dr. Shaileshbhai Patel and Dr. Hamidbhai Mansuri who were also practicing at Patan. Thereafter, Respondent/Complainant was informed that it was necessary to conduct another operation which would last for 10 minutes and Respondent/Complainant was also asked to arrange for blood and medicines. The operation, however, lasted for 2 1/2 hours and Appellant informed Respondent/Complainant that the operation was successful. However, Dr. Mansuri informed the Appellant that in fact Patient "s condition was very serious and she was not likely to survive. Despite this, Appellant continued to maintain that there was no cause for worry. Patient expired on 09.05.1997 at about 2.00 p.m. Appellant thereafter told Respondent/Complainant to take away her dead body as nothing was required to be done at Patan. 15 days after her death, Respondent/Complainant approached the Appellant with the request to furnish him necessary case papers in respect of the treatment of the Patient so as to satisfy himself that there was no medical negligence or deficiency in the treatment. However, Appellant refused to give him the papers. Being aggrieved by the death of his wife which he attributed to medical negligence on the part of Appellant while performing the D&C operation, during which the uterus of the Patient was punctured, terminating the pregnancy without consent and thereafter in not taking proper care to check the severe pain and bleeding before discharging her on 06.05.1997 and later after the Laparotomy on 07.05.1997, Respondent/Complainant filed a complaint before the State Commission against Appellant and other Doctors, who had attended to the Patient, and also against the Proprietor of Sarvodaya Medical Stores on grounds of medical negligence and deficiency in service and requested that Appellant be directed to pay (i) Rs.5.00 Lakhs to Respondent/Complainant for the loss of company of his wife who was only 30 years of age at the time of her death; (ii) a total of Rs.12.00 Lakhs to his young children for being deprived of love, care and affection of their mother at the tender age; (iii) Rs.2.00 Lakhs for mental tension, agony and inconvenience; and (iv) Rs.10,000/- as litigation costs. It was requested that Opposite Party No.2 (Dr. Shaileshbhai Patel) be directed to pay Respondent/Complainant Rs.50,000/- for his deficiency in service and Opposite Parties No. 4 and 5 (Dr. Rajesh B. Patel and Subhashbhai Patel respectively) Rs.5000/- each for their deficiency in service.

The above allegations were refuted by Opposite Parties No. 1 and 2 (Appellant

and Dr. Shaileshbhai Patel respectively). Appellant contended that when the Patient was admitted to the Maternity Home with complaints of irregular menstruation and pain in the uterus, on examination it was found that she was 3 months " pregnant with threatened abortion. Appellant denied that he had conducted a D&C procedure. However, since there was a threat of abortion, Patient was given option to either undergo conservative treatment or to abort the pregnancy. Patient opted for termination of the pregnancy and was, therefore, given medical treatment for the same, namely, Prostadin injection and cervi prime gel to facilitate the abortion. Since the Patient herself volunteered for termination of pregnancy, no written consent from her was taken. However, in her medical case history a noting to this effect was made. Patient was thereafter advised to stay in the Maternity Home as indoor patient but she left without permission and without even informing the staff of the Maternity Home. She, however, came back next day on 07.05.1997 at about 11.30 a.m. with a reference from her family doctor with severe abdominal pain. She was immediately examined by the Appellant and further treatment commenced. In the interest of her health, Laparotomy operation was conducted with the help of Opposite Party No.2 (Dr. Shaileshbhai Patel) after obtaining written consent. The operation was successful and the Patient 's condition was improving till the third day when her health deteriorated. Although all the necessary treatment was given as per standard medical procedure, unfortunately she expired on 09.05.1997 at about 2.00 p.m. It was specifically denied that the uterus of the Patient was punctured during the alleged D&C operation on 06.05.1997 because no such surgery was ever performed and further she left the hospital at her own risk. Appellant further contended that he had advised the Respondent/ Complainant and other relatives to get a postmortem done of the Patient, so that the real cause of death could be ascertained but they refused to get the postmortem done. There was no medical negligence on the part of the Appellant who being a qualified doctor and using his best professional judgment and in consultation with other expert doctors tried his best to treat and save the Patient. It was contended that Patient 's death occurred because against medical advice, she left the hospital without permission, which aggravated her condition.

3. THE State Commission after hearing the parties and on the basis of evidence produced before it partly allowed the complaint and found only Dr. Mohanbhai S. Patel (the Appellant) guilty of medical negligence and deficiency in service. In its detailed order, the State Commission had concluded that the termination of the pregnancy was carried out without the consent for the same and the Patient and her relatives were also not kept informed about the progress of her condition. After administration of Prostadin injection and cervi prime gel, Patient was not advised about the possible side effects and the possible complications. Further, the Patient was left under the care of a woman called Gangaben who may not have had the necessary skills and competency to supervise the effects of the medication/injection given. Although there was no evidence that any D&C was done and her pregnancy was terminated by giving Prostadin injection and cervi

prime gel, this led to complications, including rupture of uterus and bleeding, to which Patient ultimately succumbed. The State Commission "s specific observation in respect of the lack of care and negligence is reproduced : "18. Opponent no.1 when used drugs or procedure to terminate the pregnancy ought to have known the inherent danger of using the drugs and taken enough safeguard to either prevent those complications or at least should have remedied them recognizing them as they came (in this case since starting of initial treatment; danger signals had already started appearing). The lack of recognizing and no treating them in time amounts to negligence, more so when opponent no.1 is claimed to be senior, highly qualified and experienced gynaecologist and obstetrician. 19. Complications occurring during the treatment cannot be said to be negligence but not recognizing them in time and not treating them or treating them too late when patient had reached end stage where results were certainly to the detriment to the patient certainly amounts to negligence. The patient who has reposed full trust and faith in the hands of treating doctor for his or her life and if that trust and faith is negative, it is not only negligence but also deficiency in service. " Keeping in view all facts, including the remarriage of the Respondent/Complainant, the State Commission directed the Appellant to pay a sum of Rs.3.00 Lakhs as compensation to be invested in fixed deposit till the three children attain the age of majority after which this amount would be equally divided among all the four complainants i.e. 25% to each of the three children and the Respondent/Complainant. This amount was directed to be paid with 6% interest per annum from the date of complaint i.e. 17.10.1997 till realization of the amount as also Rs.5000/- as litigation costs.

4. BEING aggrieved by the order of the State Commission, the present First Appeal has been filed. Counsels for both parties made oral submissions.

5. COUNSEL for the Appellant contended that the State Commission erred in concluding that there was medical negligence and deficiency in service on the part of Appellant by not taking cognizance of the fact that when the Patient was brought for treatment to Appellant, she was threatened with imminent abortion and wanted termination of the pregnancy, for which she was given necessary medicines/injection. No D&C procedure was conducted. It was specifically stated by Counsel for the Appellant that since the Patient herself wanted the pregnancy to be terminated and further since her life was at risk because of the immediate threatened abortion, as per provisions of Section 3(2)(i) of the Medical Termination of Pregnancy Act, 1971, which provides that a pregnancy may be terminated by a registered medical practitioner if the continuance of the pregnancy involves a risk to the life of the pregnancy woman or grave injury physical or mental health, no consent was required. It was also emphasized that the Patient unauthorizedly left the Maternity Home on the night of 06.05.1997 and in this connection the medical attendant had also written this fact in the medical case history of the Patient which was also filed in evidence before the State Commission. The allegation that the uterus got punctured during the D&C procedure did not arise since even the State Commission had concluded that no

D&C operation was conducted. Counsel for the Appellant further stated that as a diligent medical professional even though the Patient had left unauthorizedly, when she came back next day with complaints of severe abdominal pain he immediately examined her and conducted a Laparotomy which was necessary. Two other Doctors assisted him in the procedure. Appellant had also produced expert opinion of a Physician and an Anesthetist in support of his case but unfortunately their statement was disregarded by the State Commission on the ground that they were not Specialists in Gynaecology and, therefore, their statement did not amount to expert opinion. It was also highlighted by Counsel for the Appellant that the State Commission itself had observed that there was no medical negligence per se in the actual treatment of the Appellant and he was being penalized on the ground that Patient and her relatives " consent was not taken prior to termination of the pregnancy and proper follow up and treatment was not given to check the bleeding. However, these facts are not borne out by the case history of the Patient on record. The finding of the State Commission was, therefore, against the settled principles of the law with regard to medical negligence.

6. COUNSEL for the Respondent/Complainant has reiterated in his oral submissions that there was no evidence to support Appellant 's contention that the Patient, who was three months pregnant at the time of visiting the Appellant, wanted the termination of the pregnancy. She had come with complaints of pain in the uterus and although a provisional diagnosis of threatened abortion was made, after due examination the medical history does not indicate that there was imminent threat of abortion. Further, after the clinical tests nowhere was it mentioned that the abortion was inevitable. In fact as per the clinical notes, it was confirmed that the Patient was 14 weeks pregnant and the advice given was "Os tightening and complete bed rest ". Thereafter in the same case sheet, it was recorded "Pt. (Patient) refuses for conservative treatment and wants to undergo termination ". Patient never wanted to terminate the pregnancy and she was administered medicines/injection to terminate the same without her knowledge or consent. Appellant 's contention that as per the provisions of the Medical Termination of Pregnancy Act, 1971 no consent was required is not correct. Except when the life of the Patient is at extreme risk, the Doctor is statutorily bound under the provisions of the above Act to obtain the written consent of the pregnant woman. Further, with respect to termination of pregnancy, which exceeds 12 weeks, the opinion of two registered medical practitioners is necessary to opine that continuance of pregnancy involves a risk to the life of the pregnant woman. In the instant case, as per the medical records of the Patient, it has nowhere been indicated that the life of the Patient was at risk. Therefore, merely recording in the medical case history that the Patient wanted medical termination of the pregnancy does not in any way amount to consent nor does it give the medical practitioner the right to have terminated the pregnancy. Counsel for the Respondent/Complainant further stated that it is incorrect that the Patient left the Maternity Home unauthorizedly and without medical permission. In fact,

after taking his fees from the Respondent/Complainant, Appellant himself discharged the Patient even though she continued to complain of severe abdominal pain at that time. When the Patient was brought back on 07.05.1997 and the Laparotomy was conducted on her, Patient 's relatives were never informed about the seriousness of her condition by the Appellant, who kept assuring that the Patient was recovering satisfactorily. Had the Respondent/Complainant known that her condition was serious, he would have taken her to Ahmedabad where better medical facilities were available. The fact that the Appellant was making false assurances was contradicted by one of the attendant doctor (Dr. Hamidbhai Mansuri) who had informed the Respondent/Complainant that the Patient 's condition was serious and had also deposed accordingly before the State Commission. The same doctor had also deposed that there was a perforation in the uterus. Counsel for the Respondent/Complainant also denied that Appellant had ever advised him to get a postmortem conducted after his wife expired.

7. WE have heard learned Counsels for both parties and have also carefully gone through the evidence on record. Essentially, Appellant and his Counsel made the following contentions in support of their case: (i) Since the pregnancy was terminated on the request of the Patient herself and since the abortion was imminent and posed a risk to the Patient 's life, under Section 3(2)(i) of the Medical Termination of Pregnancy Act, 1971 the Patient 's consent was not necessary; (ii) The Patient left the Maternity Home without permission and against the medical advice, because of which her condition deteriorated; and (iii) When the Patient came back to the Maternity Home the next day with complaint of severe abdominal pain, after duly examining her, a Laparotomy was conducted and her condition became satisfactory till the third day following the Laparotomy when it suddenly deteriorated and she passed away. Since the Patient had been treated as per standard medical procedure with utmost professional care, her death though unfortunate could not be attributed to any medical negligence on Appellant 's part.

8. WE have considered these submissions and are unable to agree with the same since these are not supported by any credible evidence on record. It is an admitted fact that no written consent of the Patient was taken by the Appellant before terminating the pregnancy. Appellant 's explanation for the same, namely, that the Patient herself had volunteered for termination of pregnancy and that under the Medical Termination of Pregnancy Act, 1971 if the Patient 's life is at a risk, the Doctor can terminate the pregnancy without seeking consent, are not supported by the evidence on record. There is, for example, no clinical indication that the Patient 's life was at a risk. In fact, as recorded in the medical case history of the Patient, the Appellant himself had recorded after the x-ray and the ultrasound that the Patient required bed rest and conservative treatment. If abortion was indeed imminent or threatened, a recording to this effect should have been made in the final diagnosis i.e. after x-ray and ultrasound tests. In any case, even if the Patient herself had volunteered for

termination of the pregnancy, under the Medical Termination of Pregnancy Act, 1971 her written consent was necessary. Merely recording the same by a Doctor in her medical records is not adequate in such cases. This is also confirmed by a ruling of the Hon "ble Supreme Court of India in Samira Kohli Vs. Dr. Prabha Manchanda [(2008) 2 SCC 1], wherein the Hon "ble Apex Court has categorically ruled that unless it is necessary to save the life or preserve the health of a patient, valid consent is a must. In the instant case, in the absence of any credible independent evidence that there was immediate risk to the life of the Patient and also that she herself had volunteered to undergo termination of the pregnancy, not taking written consent of the Patient clearly amounted to negligence and deficiency in service. Regarding the contention of the Appellant relating to Patient leaving the Maternity Home unauthorizedly, we agree with the finding of the State Commission that the Patient was duly discharged after she had paid the medical fees for her treatment. A recording on her medical sheet to the contrary on the basis of information given by a non-medical attendant is not conclusive evidence of the same, particularly since the Patient was still experiencing severe pain on that day and had no reason to want to leave. Also as noted by the State Commission, the Patient would not have come back within a few hours to the same medical facility and readmitted by the Appellant for further treatment, if she had left unauthorizedly a few hours earlier.

9. WE are also unable to agree with the contention of the Appellant that following the Laparotomy, Patient 's condition was satisfactory and stable, particularly since one of the other Doctors, who had attended the Patient and assisted in the Laparotomy, in his evidence before the State Commission clearly stated that the Patient 's condition was serious/critical and he had informed the Respondent/Complainant about the same. The same witness has further deposed that he had observed during the Laparotomy that there was bleeding and a hole in the uterus of the Patient, which further confirms the seriousness of the Patient 's condition. It is well established as per medical literature that the drugs Prostin injection and cervi prime gel can have serious side effects and complications and a patient need to be cautioned about the same. As observed by the State Commission, there is no evidence that the Appellant had informed the Patient about these risks, which as a prudent medical professional he was expected to do. Therefore, while the Appellant may have used standard case treatment in terminating the pregnancy as also conducting the Laparotomy, as stated above, he was clearly guilty of deficiency in service and negligence in not taking written consent of the Patient before terminating the pregnancy, in not informing her about the possible side effects of the drugs/injection given to terminate the pregnancy and in not keeping the Respondent/Complainant informed of the Patient 's critical condition following the Laparotomy, thus, depriving him of the possibility of taking the Patient to a higher medical health institution to manage the case.

10. IN view of above facts, we agree with the finding of the State Commission that there was deficiency in service on the above counts and the compensation of Rs.3.00 Lakhs with interest awarded in this case is just and reasonable. We,

therefore, uphold the order of the State Commission and dismiss this First Appeal.