(2013) 09 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

Montu APPELLANT

Vs

Pt. Bhagwat Dayal Sharma and Another RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : 2013 4 CPJ 113

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

Judgement

1. THIS present revision petition is filed against the impugned order passed by State Consumer Disputes Redressal Commission (in short, State Commission), Haryana, Panchkula in First Appeal No. 770/2012 by the said order, the State Commission dismissed the appeal and set aside the orders of the District Consumer Disputes Redressal Forum (in short, District Forum), Haryana, Rohtak passed in a Compliant Case No. 227 of 2005. The Facts in Brief:

The petitioner/Complainant since age of 2 years was suffering from Thalassemia major and was under the treatment of the respondent/Opposite Parties Pt. Bhagwat Dayal Sharma, Post Graduate Institute of Medical Sciences, Rohtak, Haryana (in short PGIMS, Rohtak). The opposite parties treated the complainant by regular blood transfusion since 1991. Complainant was admitted at OPs and on 6.5.2004 he was detected as HIV +ve through ELISA test. Further it was confirmed at Dr. Lal Path Lab Pvt. Ltd., New Delhi on 26.5.2004 by ''Western Blot Test'' a confirmatory test. The grievance of the complainant was that due to the negligence of the Opposite Parties, HIV +ve infected blood was transfused to the Complainant and therefore his parents incurred huge expenses more than Rs. 20 lakhs to save the life of their son. Also the patient/complainant was required to get the HIV tests done periodically for every three months.

2. THUS , alleging it a case of the medical negligence and deficiency in service on the part of the Opposite Parties, the Complainant filed complaint No. 227/2005 before the District Forum on 14.6.2005 seeking compensation of Rs. 20 lakhs from the Opposite Parties. Earlier the District Forum dismissed the complaint vide order on 4.10.2007; this order stood maintained upto this National Commission.

The Hon''ble Supreme Court vide judgments dated 30th January, 2012 remitted the case to District Forum, Rohtak for fresh disposal. Thereafter, in view of order of Hon''ble Supreme Court, District Forum decided the complaint afresh.

3. ON appraisal of the pleadings and evidence on record, the District Forum accepted the complaint and passed an order as: Therefore having regard to the entirety of the facts and circumstances of the case and taking overall view to meet the ends of justice it is directed that the respondents shall deposit a sum of Rs. 16,00,000/ - (Rupees sixteen lakhs only) in the name of the complainant by way of fixed deposit in some nationalized bank. The bank shall pay monthly interest to the complainant for his day to day medical expenses every month so as to make it convenient for the complainant to get the treatment as per his choice. The complaint is disposed of accordingly.

4. AGAINST the order of District Forum the OPs filed an appeal FA 770/2012 before the State Commission. The State Commission heard Counsel of both the parties, considered the additional affidavit filed by the Complainant and the affidavit evidences of Senior Professor and head of Unit -II, Department of Pediatrics, Dr. Pankaj Abrol, Dr. C.S. Dal, Director, and Dr. Mrs. Bimla Rathi, the blood transfusion officer of PGIMS, Rohtak. The State Commission made observations as: In the affidavit filed by Dr. Bimla Rathi, Blood Transfusion Officer of Blood Bank of the institution, it has been stated that every time the blood is tested before the transfusion and there is no evidence that the Complainant contacted the HIV disease with the transfusion of the blood by the Opposite Parties. Dr. Pankaj, Head of the Department of Pediatric in his affidavit has stated that when the demand is raised for the supply of the blood from the Blood Bank from any department, then it contains full particulars i.e., the name of patient, age, blood group sample each unit of blood is to be tested before transfusion. In case any of the unit is found positive of HIV +ve, the same is discarded straightway, the record of which is maintained in the institution. The Complainant might have been occasionally suffering from fever and other ailment and he must have been getting treatment for the same from local doctors and other institutions, other than the present institution. No evidence was produced by the Complainant in support of the fact that he contacted the HIV infection from the blood transfusion by the Opposite Parties.

The State Commission allowed the appeal with following observations: Thus, under the facts and circumstances of the case the Opposite Parties cannot be held guilty of medical negligence and deficiency in service because of developing the disease to the Complainant of HIV +ve merely on the ground that the Complainant was a regular patient of the Opposite Parties for blood transfusion since childhood. There may be so many other reasons for such a disease as stated by the Expert/Doctors examined on behalf of the Opposite Parties. No evidence has been brought on file that Complainant contained HIV +ve due to infected blood transfusion at Opposite Parties or that infected blood transfusion is the only cause of containing HTV +ve.

5. AGAINST the impugned order of State Commission the complainant preferred this revision petition.

6. WE have heard the Counsel for petitioner and perused the evidence on record like a copy of treatment taken by petitioner during 1997 to 2004 which obtained under RTI Act by the complainant Also referred medical texts and literature on Thalassemia and it''s management. As per records the complainant was known case of Thalassemia diagnosed from the age of 2 years. It is a Genetic disorder transmitted through defective genes of the parents. There was no complaint from the Complainant during treatment for about 14 years, as stated by the Complainant or even by any other thalassemia patient/attendant.

7. IT was admitted that the Complainant was under treatment periodic blood transfusions by OP. As per Hon''ble Supreme Court''s directions in case Common Cause v. Union of India and others on 4 January, 1996, all the blood banks in India are regulated by Drugs and Cosmetics Act 1940 and NACO (National AIDS Control Organization) it is mandatory for all the blood banks to screen each unit of blood for Transfusion Transmitted Diseases HIV/HbsAg/HCV/VDRL and MP (TTD). Therefore, each and every unit of blood and blood components supplied from the Blood Bank of the PGIMS, Rohtak are always screened/tested for TTD and the blood units, which after screening are found positive for HIV/HbsAg/HCV are being discarded.

8. ON perusal of a document obtained under RTI Act about the treatment taken by petitioner during 1997 to 2004; we find it is the list of blood transfusion given to the complainant with details of date of transfusion, date of collection, BT/ Bottle No, time of transfusion and patient''s CR number. As per said document total 214 units were transfused to the complainant from 16.9.1997 to 7.8.2005. All such units were screened for TTD and thereafter transfused as per Drug Controller norms. Hence, production of mere list does not signify medical negligence or any deficiency in service by OPs. There may be other reasons, which could be the cause of HIV infection. Thalassemias (thal -a -SE -me -ahs) are inherited blood disorders. "Inherited" means that the disorder is passed from parents to children through genes. The evidence on record of Dr. Bimala Rathi stated that the complaint had mass per abdomen since 1 1/2 years and he must have treated for the fever and other aliments by some local doctors. The complainant visited OPs for only blood transfusion which was supplied free of cost. However, complications from Thalassemias and their treatments are frequent. People who have moderate or severe Thalassemias must closely follow their treatment plans. They need to take care of themselves to remain as healthy as possible.

9. THE learned Counsel for complainant relied upon the several authorities of Hon''ble Apex Court V. Kishan Rao v. Nikhil Super Specialty Hospital and another, : 2010 (5) ALD 46 (SC) : V (2010) SLT 349 : III (2010) CPJ 1 (SC) : (2010) 5 SCC 513, where it has been held that "where negligence is evident, the principle of res ipsa loquitor operates and the Complainant does not have to

prove anything as the thing (res) proves itself." Further reference has been made to case law cited as Savita Garg v. Director, National Heart Institute, : IV (2008) CPJ 40 (SC) : VI (2004) SLT 385 : (2004) 8 SCC 56, wherein it has been held that "once a claim petition is filed and the Complainant has successfully discharged the initial burden that the hospital/clinic/doctor was negligent and that as a result of such negligence the patient died, then in that case the burden lies in the hospital/doctor concerned who treated the patient to show that there was no negligence involved in the treatment.

10. THEREFORE , we are of opinion that Complainant''s contention is not correct. We do not find any force in these arguments. The OPs are acted as standards of medical practice. PGIMS, Rohtak is a reputed institute and the blood transfusion services are conducted as per norms of Drugs and Cosmetics Act. There is no chance of transfusing the infected blood to any patient and also the Complainant here. It is also known that Thalassemia disease is genetic and incurable; needs regular blood transfusion preferably packed red cells (components), even while observing all mandatory safety precautions before accepting blood from a blood donor and then transfusing it, there was always the risk that the donor had donated his blood during the window period. Hence, we do not find any deficiency in services by OP in the treatment of the complainant for long period.

11. THEREFORE , we do not find any apparent error in the order of the State Commission and do not wish to interfere in it. Hence, the revision petition is dismissed. No orders as to costs.

