(2015) 01 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

Case No : 3932 of 2012

M/S. HANDA NURSING HOME & ANR Vs RAM KALI (SINCE DECEASED) THROUGH LRS.?SHRI SURESH CHAND (HUSBAND) & ORS

Date of Decision : 30-01-2015

Acts Referred:

Citation : 2015 5 AllMR 91

Hon'ble Judges : K.S. Chaudhari

Advocate : Surekha Raman, Dileep Poolakkot, Pawan Kr. Ray

Judgement

1. This revision petition has been filed by the petitioners against order dated 06-08-2012 passed by the learned State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission") in First Appeal No. FA-1002/08 - M/s Handa Nursing Home & Anr. Vs. Mrs. Ram Kali through LRs, by which while dismissing appeal, order of District Forum allowing complaint was upheld.

2. Brief facts of the case are that on 13.3.2006, the complainant- Ramkali felt some pain in the right side of her abdomen and was taken to Dr. Madan Jain who referred her to Dr. Saroj Singla for ultrasound. The ultrasound report was shown to Dr. Madan Jain and Dr. Jain referred the case to Handa Nursing Home, OP/ petitioner. On seeing the ultrasound report, Dr. A.K. Handa diagnosed it as right ureterie stone and therefore, advised operation through Laser Technology. Consequently on 14.3.2006, she was operated upon and was discharged on 15.3.2006 from the Nursing Home, though complainant was suffering from pain but Dr. Handa informed the family members of the complainant - Ramkali that the operation had been successful, and the stone had been broken and DJ Stent had been inserted which was to be removed after one week and the complainant could be taken to home. Complainant - Ramkali paid Rs. 14,000/- to Handa Nursing Home. After one week i.e. 24.3.2006, the Stent was removed yet the complainant/Ramkali kept complaining pain and temperature. She was readmitted to Nursing Home i.e. OP/petitioner on 2.4.2006. On the advice of Dr. Handa, once again the stent was inserted in the right side of the abdomen and

complainant - RamKali was discharged on 3.4.2006. The stent was removed after 10 days and on 19.4.2006, medicines were changed but despite this, the condition of the complainant/Ramkali did not improve and the pain & temperature continued. On 22.4.2006, IVP was conducted by Dr. Handa. The complainant/Ramkali was once again admitted to the Nursing Home. The condition of the complainant/Ramkali became worsened but nothing was done and it was admitted by Dr. Handa that there was some negligence on the part of the Nursing Home. When it was very strongly objected by the members of the family, Dr. A.K. Handa fled away from the Nursing Home. Faced with the situation, the complainant/Ramkali was taken to AIIMS where the Doctors orally called negligence of the Nursing Home as the operation of Dr. Handa was not conducted properly and there was lot of negligence and proper care was not taken by the Nursing Home. The condition of the complainant further deteriorated and was admitted to AIIMS on 27.4.2006 where she remained till 14.5.2006 during which period she was put to dialysis and hemo-dialysis couple of times. Since there was strike of doctors in Delhi, complainant/respondent was discharged from AIIMS though her condition was still critical as both her kidneys were not functioning and laboratory reports were not showing any signs of normalcy. The complainant/respondent was completely bedridden and unable to support herself on her own. Alleging deficiency on the part of opposite parties/ petitioners, complainant filed complaint before District Forum. Opposite parties/ petitioners resisted complaint and denied the allegations and submitted that the treatment given was nowhere stated to be wrong by the doctors of the AIIMS; therefore, there was no negligence in administrating the treatment to the complainant by the doctors. It was admitted that the complainant visited the OP-Nursing Home along with the report of the ultra sound of Dr. Saroj Singla on 13.3.2006. It was further admitted that the complainant was seen on 13.3.2006 by Dr. A.K. Handa of Handa Nursing Home and it was diagnosed as right uretery stone. The doctor never advised operation through Laser Technology, however, the complainant/petitioner was advised Ureteroscopy. No operation of the complainant/petitioner was ever conducted but ureteroscope was inserted through a urinary passage and a DJ Stent was placed and the complainant was discharged on 15.3.2006. It was further admitted that the complainant/ respondent visited the Nursing Home on 24.3.2006 and DJ Stent placed was removed

as the complainant complained of pain and discomfort, which normally occurs in case where DJ Stent is placed. The complainant/petitioner was readmitted in the Nursing Home on 2.4.2006 with the complaint of pain. Though no stone was seen yet the DJ Stent was again placed because sometimes even a very small particle of few millimeters, if remain, could cause discomfort and pain. The complainant was discharged on 3.4.2006. Thereafter, the Stent was removed on 19.4.2006. As the pain persisted, the IVP was advised on 22.4.2006. Thereafter it was observed that blood urea and serum creatinine began to rise, the Nephrologist was consulted and the treatment started as per his advice. The

complainant/petitioner left the Nursing Home on 25.4.2006. It is also denied that Dr. A.K. Handa left the Nursing Home and it was remained open. The condition of the complainant/petitioner did not deteriorate due to any fault in treatment conducted at Handa Nursing Home. Therefore, by no stretch of imagination, it can be said that there was any deficiency or negligence on the part of the doctors of the petitioner and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed opposite party to pay Rs.7 lakh as compensation including cost of litigation to the complainant. Appeal filed by opposite parties was dismissed by learned State Commission vide impugned order, against which this revision petition has been filed.

3. None appeared of Respondent Nos. 2 & 3 even after service and they were proceeded ex-parte.

4. Heard learned counsel for the petitioners and Respondent No. 1 and perused record.

5. Learned counsel for the petitioners submitted that inspite of proof that treatment given by the petitioners was as per standard practice, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal without considering literature provide by the petitioner, hence revision petition be allowed and impugned order be set aside. On the other hand, learned counsel for the respondents submitted that order passed by learned State Commission is in accordance with law, hence revision petition be dismissed.

6. The core question to be decided in this revision petition is whether treatment given by the petitioner was as per standard practice or not.

7. Perusal of record reveals that complainant-Ramkali visited petitioners'' hospital and she was advised Ureteroscopy and petitioner put DJ Stent and she was discharged on 15-03-2006 but again she was admitted on 02-04-2006 and another DJ Stent was again placed and was discharged on 03-04-2006. Record further reveals that after removing Stent on 19-04-2006, as pain persisted, IVP was advised on 22-04-2006 and as blood urea and serum creatinine began to rise, the Nephrologist was consulted and treatment started as per his advice. It appears that later on complainant left Nursing Home on 25-04-2006 and consulted AIIMS. As per report dated 06-07-2006 of AIIMS complainant was earlier discharged on 13-05-2006 with twice weekly MHD at outside. In report dated 06-07-2006 it has further been mentioned that patient did not follow instructions and took Ayurvedic medicine and one HD. On 26-07-2006 she was discharged with advice for twice weekly MHD at any suitable center.

8. District Forum sought expert opinion on certain queries from AIIMs and Medical Board of six members replied queries as under:--

"In reply to the above queries, Medical Board constituted by the Media Supdt.,

AIIMS, which consists of six members has replied as under:

(1) The patient Ram Kali had pain in the right flank on 13.3.2006. Ultrasonography revealed normal left kidney and hydronephrosis of the right kidney. The renal functions as assessed by blood urea and creatinine were within normal limits. It may be mentioned here that the glomerular filtration rate or GFR (which is the actual measure of renal function) was about 50 ml/min by both the Cockcroft-Gault and the MDRD formula (normal 80-120 ml/min). This was calculated by us from the available records. Prior to the first intervention on 14.3.06, there was a lack of a function study (e.g. Intravenous Pyelography IVP or Nuclear Scan). Further, the diagnosis of a stone was based only on an ultrasonogram, which is an observation dependent imaging study. Hence, performance of a plain X-Ray/Non-contrast CT KUB, and a functional study would have been advisable prior to operative intervention. As per the hospital records, during Ureteroscopy on 14.3.2008, a stone was seen in the right ureter, which was broken into small pieces and a double J Stent was put in place.

(2). The treatment given was as per standard practice. Details of our observations are given in paragraph I above.

(3) Before re-stenting was done for a second time on 2.4.2006, it would have been advisable to confirm the presence of persisting destruction by repeating ultrasonogaphy of the kidneys, ureter and bladder. This would have substantiated the need for re-stenting.

(4) A functional study IVP was done on 22.4.06 after documenting apparently normal renal functions as evidence by blood urea and creatinine within normal limits. 50 ml of the radio-contrast omnipaque was administered. This is as per standard procedure. However, calculated GFR was again approx. 50 ml/min. In this connection we would like t state that it is now known that serum creatinine is a poor surrogate mark of renal function. Renal functions are best assessed by GFR. However, the practice of estimating GFR prior to performing IVP is still not the standard practice in India or even internationally. IVP showed non-functioning right kidney and sub-optimally functioning left kidney. As already mentioned, the calculated GFR on two occasions prior to performing IVP too showed sub-optimally functioning kidneys. Thus, it is highly likely that the patient had pre-existing early chronic kidney disease affecting both the kidneys.

(5). The patient also had underlying infection (as evidenced by high leukocyte count). The combination of pre-existing chronic kidney disease with contrast administration and infection lead to gross renal dysfunction, which became evident on 25.4.06.

(6). Subsequently, it was a progressive downhill course from which the renal functions never recovered and the patient became dialysis dependent.

9. In reply to query no. 2 it has been specifically mentioned that treatment given was as per standard practice . In reply to query no. 4 it was further mentioned

that after functional study IVP was done on 22-04-2006 and treatment administered was as per standard procedure. In reply to query no. 4 it was further observed that renal functions are best assessed by GFR but in the second sentence admitted that the practice of estimating GFR prior to performing IVP is still not a standard practice in India or even internationally .

10. When earlier treatment given was as per standard practice and GFR study was not standard practice in India or even internationally then merely by not estimating GFR, it cannot be held that petitioner was negligent in giving treatment.

11. Expert committee in reply to query no. 1 observed that performance of a plain X-ray/non-contrast CT KUB and functional study would have been advisable prior to operative intervention. Learned counsel for the petitioner has placed reliance on the British Journal of Radiology of 74 (2001), 901-904 in which Article of M. Patlas & Ors. was published, in which it was quoted as under:-- "In summary, both spiral CT and US were found to be excellent modalities for depicting ureteral stones, but because of high cost, radiation dose and high workload of CT, we suggest that US should be performed first in all cases and CT should be reserved for cases where US is unavailable or fails to provide diagnostic information."

12. in the case in hand AIIMS report reveals that as per hospital record during Ureteroscopy done on 14-03-2006 a stone was seen in the right ureter, which was broken into small pieces and DJ stent was put in place. When stone was visible and it was broken into pieces there was no necessity to go for spiral CT. Learned counsel for the petitioner has also placed reliance on Article of Seong Jin Park and ors. published in 2008 by the American Institute of Ultrasound in Medicine, J. Ultrasound Med 2008; 27:1441-1450 . 0278-4297/08/$3.50, in which it was observed as under:-- "In summary, sonography is an excellent modality with many advantages for detecting ureteral stones; it is radiation free, relatively inexpensive, universally available, and easily applicable, and it has high diagnostic efficacy. Specific techniques for preparing the patient before scanning, new sonographic equipment, compression techniques, and additional intracavitary scanning can enhance the diagnostic accuracy and confidence for detecting ureteral calculi on sonography."

13. In the light of aforesaid articles and costs of other tests, petitioner has not committed any negligence in not going for plain X-ray/non-contrast CT KUB - study of GFR prior to giving treatment. Expert Committee has also indicated that these tests would have been advisable prior to operative intervention but nowhere mentioned that without these tests petitioner committed deficiency in giving treatment to Ramkali.

14. Expert Committee in reply to query no. 4 observed that it was highly likely that patient had pre-existing early chronic kidney disease affecting both the kidneys which lead to gross renal dysfunction. Expert report nowhere indicates

that treatment given by the petitioner was not as per standard practice.

15. It appears that on account of not following instructions given by AIIMS and taking Ayurvedic medicine, complainant developed further complications.

16. During course of arguments it was apprised that complainant - Ramkali died on 01-11-2009 meaning thereby after more than 31/2 years of treatment given by the petitioner. Complainant has

not put any record of treatment for this period. Complainant has also not placed on record cause of death of Ramkali and in such circumstances, it cannot be presumed that on account of medical negligence of petitioner, Ramkali suffered, which caused her death.

17. Learned counsel for the petitioner also placed reliance on judgment of Hon''ble Apex Court in (2010) 3 SCC480 - Kusum Sharma & Ors. Vs. Batra Hospital and Medical Research Center & Ors., in which it was observed that negligence, cannot be attributed to a Doctor so long as he performs his duties with reasonable skill and competence. It was further observed that merely because the doctor chose one course of action in preference to other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession. In the case in hand as per AIIMS report, treatment given by the petitioner to the complainant was as per standard practice and treatment given after IVP study was also as per standard procedure. No negligence can be attributed on the part of the petitioner in performing his duties with reasonable skill and competence.

18. In the light of aforesaid discussion it becomes clear that no negligence can be attributed on the part of petitioner in giving treatment to Ramkali and learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal and revision petition is to be allowed.

19. Consequently, revision petition filed by the petitioner is allowed and order dated 06-08-2012 passed by State Commission in First Appeal No. FA-1002/08 - M/s Handa Nursing Home & Anr. Vs. Mrs. Ram Kali through LRs and order of District Forum dated 29-09-2008 passed in Complaint case No. 306/2006 - Ram Kali through LR Vs. Handa Nursing Home is set aside and complaint stands dismissed with no order as to costs.

