

(2006) 12 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

NEHRU HOSPITAL

APPELLANT

Vs

BHIWANI DUTT

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Citation : 2007 1 CPJ 294 : 2007 1 CPR 104

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeals disposed of

Judgement

1. THESE two appeals arise from an order passed by the State Commission on 26.2.1998 on a complaint filed by Mr. Bhiwani Dutt (appellant in FA No. 163 of 1998) against the Nehru Hospital, Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) (appellant in FA No. 139 of 1998 and respondent Nos. 2, 3 and 4 in FA No. 163 of 1998).

2. VERY briefly facts leading to filing this complaint were that the complainant Bhiwani Dutt approached the PGIMER on 14.10.1995 with severe pain in stomach, where he was examined and treated in the emergency ward. It was the case of the complainant that during the treatment being given by the opposite parties before the State Commission, he started experiencing internal burns in the entire lower portion of the left arms. He also gradually lost sensation. It was his case that on his inquiry, he was told that it happened when glucose was administered on his left hand. On 13.11.1995, the complainant was examined by the Neurology Department of PGIMER and it was reported that Ulnar Nerve could not be stimulated at any point, indicating severe damage to this nerve. The complainant approached the hospital time and again but he did not get any relief. The complainant who was a mechanic in Ordinance Cable Factory at Chandigarh has lost his capacity to earn as his left hand fails to hold anything. Thus, alleging medical negligence a complaint was filed before the State Commission. The case was contested by the opposite parties, namely, appellant and the respondents in FA No. 163/1998. The State Commission after hearing the parties and perusal of material on record held the Nehru Hospital guilty of medical negligence and

directed the hospital to pay a sum of Rs. 1.25 lakh as compensation along with cost of Rs. 5,000. In case this payment is not made within a period of one month it was to carry interest @ 18% p.a. Aggrieved by this order these two appeals have been filed by both the parties before us. While the Appeal (FA No. 139/1998) filed by the Nehru Hospital is for setting aside the order of the State Commission, the prayer in the appeal of the complainant (FA No. 163/1998) for enhancement of compensation. We heard the learned Counsel for both the parties and perused the material on record. There is no dispute that the complainant approached the appellant hospital on 14.10.1995 with complaint of stomach pain and he was treated in the Emergency/Surgery Department, where he remained till 18.10.1995. On 18.10.1995 an ultrasound was done of the complainant. It was suggestive of complainant having "Amoebic Liver Abscess". It was only on 19.10.1995 that a 20 gauge needle was used for Aspiration Liver Abscess. It was the case of the opposite parties before the State Commission as per the written version as also in the affidavit filed by them, that the procedure of draining Liver Abscess was through a direct puncture and since the Liver is on the right side of the body of the abdominal cavity, the needle for aspiration could not cause damage to the left arm. We have also seen the affidavit filed by the opposite parties and their cross-examination. Nothing to the contrary has been shown to us that the above facts are not correct.

As per record, no expert opinion has been led by the complainant in support of its contention that the Ulnar nerve damage was caused by this procedure or was caused by administration of glucose on his left hand. The State Commission, in our view, has broadly, though not stating specifically, arrived at the conclusion of medical negligence applying the principle of *res ipsa loquitur*. We see on record that there is no specific evidence brought in support of the contention by the complainant to prove that any action on the part of the opposite parties before the State Commission resulted in damage to the nerve. But since it happened allegedly during the stay in the hospital leading the State Commission seem to have applied the above-mentioned principle of *res ipsa loquitur*.

3. THE Hon"ble Supreme Court in the recent and latest judgment on the medical negligence in the case of Jacob Mathew v. State of Punjab & Anr., III (2005) CPJ 9 (SC)=VI (2005) SLT 1=122 (2005) DLT 83 (SC)=III (2005) CCR 9 (SC)=2005 (6) SCC 1, had occasion to deal with this principle as also the onus of proof. While dealing with the question of applicability of principle of *res ipsa loquitur*, the Hon"ble Supreme Court held "simply because a patient has not responded favourably to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of *res ipsa loquitur*". THE Hon"ble Supreme Court in the cited judgment relied upon law settled in Bolam case, (1957) 2 All.ER 118, and upheld that the applicability of Bolam test and goes on to state as follows : "In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. THE fact that a defendant charged with negligence acted in accord with the general and

approved practice is enough to clear him of the charge. It is not necessary for every professional to possess the highest level of expertise in that branch which he practises. Three things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time (that is, the time of the incident) on which it is suggested as should have been used. Thirdly, when it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for that purpose. Such a person when consulted by a patient owes him certain duties viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to be given or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. THE practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires. THE doctor no doubt has a discretion in choosing the treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of an emergency."

In view of the above three principles laid down by the Hon"ble Supreme Court nothing has been shown to us that the standard of care was not as per the knowledge available at the time nor has it been stated that a particular modus operandi should have been adopted for aspiration of liver abscess and which was not done and nor for that matter those precautions were not taken which a doctor with ordinary experience should have taken. It is also not the case of the complainant that the doctor was not qualified to handle such a case. In fact, the complainant has failed to show us as to what should have been done by the doctor which was not done or what was done by the doctor which should not have been done by the doctor? In the aforementioned circumstances we are satisfied that the complainant has failed to prove the case of medical negligence as per law laid down by the Hon"ble Supreme Court (supra) against the appellant and also the respondent Nos. 2, 3 and 4 in FA No. 139/1998. In view of above the order of the State Commission is set aside and the complaint is dismissed.

4. IN the light of above, the appeal filed by the complainant, i.e., F.A. No. 163/1998 has no legs to stand on, hence dismissed. We are informed by an affidavit filed by the hospital that the amount awarded by the State Commission has already been paid to the complainant way back on 31.3.1998. While we hold the hospital not being negligent but as per settled law by now, we also direct the

hospital not to seek refund from the complainant who has been paid this money over eight years ago, who has undergone agony both mental and physical by way of damage to his Ulnar nerve. Both the appeals stand disposed of in above terms.

5. NO order as to costs. Appeals disposed of.