(2016) 07 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 85 of 2016

OXFORD HOSPITAL (P) LTD. & ANR. — APPELLANT

Vs

K.K. MITTAL & 2 ORS. — RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Indian Penal Code, 1860, Section 92, Section 88, Section 370 - Act done in good faith for benefit of a person without consent - Act not intended to cause death, done by cons

Citation : 2016 3 CPR 20

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

Advocate : V. S. Chauhan, Inder Paul Bansal, Navdeep Singh

Judgement

1. The complainant, Mr. K. K. Mittal, a chartered accountant (patient) underwent micro-distectomy operation. It was performed by OP2, Dr. Navin Chitkara at his Oxford Hospital Pvt. Ltd. on 06-04-2007 and discharged on 08-04-2007. Thereafter, he was continuously suffering from backache. During follow up on 14-04-2007 and 26-04-2007 he had continuous back pain. The OP prescribed pain killers only. Thereafter on 10-05-2007, he consulted another doctor, Dr. Sushil Kumar who advised MRI of L4-L5 disc. The MRI was performed at Apollo Imaging & Diagnostic Pvt. Ltd., it revealed that OP2 and his team has negligently performed the surgery. The MRI report showed reduction in vertical height of L4-L5 and there was still posterior central, para central disc protrusion at L4-L5. The nerve roots were severely compressed bilaterally. Thus, it clearly indicates that the OP2 failed to remove complete ligament growth between L4-L5. When the said second MRI report was shown to OP1, then he admitted that some lapses occurred during surgery. Further, on 14-05-2007, the patient got examined by Dr. R.K. Kushal, at Ludhiana who opined that regrowth of ligament occurred which needed resurgery. He approached Sir Ganga Ram Hospital, New Delhi. The specialist told that the regrowth of ligament cannot be removed by another surgery but it can be removed by fixing the plate with screw on L4-L5 by

procedure of decompression. He underwent the said surgery at Sir Ganga Ram Hospital on 18-05-2007 and was discharged on 22-05-2007. He spent about Rs.2,10,000/- for the said surgery. Therefore, alleging medical negligence the complainant filed a complaint before the Jalandhar District Consumer Disputes Redressal Forum (for short the District Forum) claiming compensation of Rs.5,00,000/- along with interest.

2. The District Forum allowed the complaint and directed the OP to pay Rs.2,00,000/- to the complainant. Aggrieved by the order of the District Forum the OP filed First Appeal before the Punjab State Consumer Disputes Redressal Commission (for short the State Commission), which was dismissed. Hence, this revision petition.

3. We have heard the counsel for the parties. The counsel for the petitioner vehemently argued that, the complainant filed a complaint without any basis and on the ground of self-serving statement. He brought our attention to both the MRI reports to clarify the matter. The first MRI dated 31-03-2007 performed prior to first surgery clearly shows as:

"Mild Retro-Listhesis of L4 over L5 vertebra.

Postero-central/postero-lateral left sided. Protrusion L4-5 disc.

Mild diffuse bulge L2-3, L3-4, L5-S1 discs.

To correlate clinically."

The patient was in the hospital of OP2 from 06-04-2007 to 08-04-2007. The course in the hospital was uneventful. The procedure performed was "IDSS L4-5 with Microdiscordectomy L4-5, (central L45) left nerve root thickened and oedematous". It correlates with the discharge summary on the record. After one month and ten days i.e. on 10-05-2007, the patient''s second MRI was performed, as advised by Dr. Sushil Kumar. The relevant findings are:

"Vertical height of L4-5 disc is reduced.

Posterocentral paracentral disc protrusion is seen at L4-5 level, compressing the thecal sac and encroaching upon the neural foramina and severely compressing the existing nerve roots at this level bilateral."

5. In this context, for more clarity, we have perused the discharge summary of Sir Ganga Ram Hospital. It clearly reveals the patient had history of pain in lower back and left leg for two years, pain in right lower limb and numbness both lower limbs for one and half months. It is recorded that the patient started having pain in lower back, radiates to both lower limbs. Thus, it was a recurrence which is most common after such surgery. We have perused the consent form. It is signed by the patient himself with a signature of witness. It clearly mentions as following;

"We have also been told that the patient can require operation again and it may

happen that the patient may not derive any benefit by the treatment, but we still are willing to get our patient operated and the hospital or its staff will not be responsible for any loss caused due to this."

Thus, in our view, the OP has clearly explained about the end result of operation. Preoperatively and post operatively there was no motor deficit. After discharge the patient was called for regular follow up and on 14-04-2007, stiches were removed. There was no complaint of any pain till 26-04-2007. Thus, regarding consent, we rely upon the observations made by Hon''ble Supreme Court in Kusum Sharma & Others vs Batra Hospital & Medical Research Centre and others , AIR 2010 SC 1050.

6. The rival arguments on behalf of learned counsel for the complainant was that as the revision petition is filed under Section 21(b) of the Consumer Protection Act, there is very limited scope. Both the fora have decided the case in favour of the complainant. Therefore, the medical negligence stands proved on the part of the OPs.

7. After our thoughtful consideration and perusal of medical record and literature, it is clear that the micro-distectomy success rate is limited. It is as,

"A recurrent disc herniation may occur directly after back surgery or many years later, although they are most common in the first three months after surgery. Recurrence rates after a patient has a disc herniation are between 5 and 10%. If the disc does herniate again, generally a revision microdiscectomy will be just as successful as the first operation. However, after a recurrence, the patient is at higher risk of further recurrences

(15 to 20% chance). If herniation continues to recur, a fusion procedure might be considered. Recurrent disc herniations are probably due to the fact that within some disc spaces there are multiple fragments of disc that can come out at a later date."

8. It is settled principle that, "No Cure is Not a Negligence". The doctor should not be punished for, if anything goes wrong. In a catena of judgments, Hon''ble Supreme Court discussed about what constitutes medical negligence? In Martin D''souza VS. Mohd. Isfaq (2009) 3 SCC 1, Hon''ble Apex Court held that;

The standard of care has to be judged in the light of knowledge available at the time of the incident and not at the date of the trial. Also, where the charge of negligence is of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time.

When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.

Similar view was taken in the case of Kusum Sharma & Others vs Batra Hospital & Medical Research Centre and others , AIR 2010 SC 1050, wherein Hon''ble Supreme Court observed as;

81. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection. The Indian Penal Code has taken care to ensure that people who act in good faith should not be punished. Sections 88 , 92 and 370 of the Indian Penal Code give adequate protection to the professional and particularly medical professionals.

9. Therefore, on the basis of forgoing discussion, we allow the revision petition, set aside the orders of the fora below and dismiss the complaint.

