(2014) 10 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

P.C. Haridasan @ Hari — APPELLANT

Vs

Lourdes Hospital Represented By The Director Pachalam, Ernakulam — RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : 2014 4 CPJ 661 : 2015 1 CPJ 35 : 2015 3 ALD 3

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : SUMITA HAZARIKA , Raghenth Basant , HARDEEP SINGH , K.N.MADHUSUDHAN

Judgement

1. REVISION petition no. 924 of 2012 has been filed against the judgment and order dated 24.09.2011 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (''the State Commission'') in First Appeal no. 960 of 2004.

2. THE brief facts of the case per the petitioner/ complainant are that during the first week of February 2002, the petitioner felt acute stomach pain. Immediately, the petitioner went to Vaikom Government Hospital and consulted Dr Manmathan, Medical Officer, who prescribed some medicines and advised rest for one week. The petitioner complied with the advice but there was no relief to the pain. Therefore, the petitioner went to the hospital at Ernakulam and consulted Dr S G Rajan on 17.05.2002. Petitioner was admitted there as an inpatient. He was in the hospital for three days. During the said period, blood, urine, sputum etc., were tested, x -ray and scan were also taken. After going through the reports, x-ray and scan report the doctor diagnosed the pain is due to kidney stone. As per the scan report dated 08.05.2002-13 x 6 mm calculus seen in the lower pole of the kidney.

3. THE petitioner accordingly met the 2nd respondent on 06.06.2002. The petitioner was admitted in the 1st respondent hospital on 06.06.2002 itself. In the final diagnosis it was found that the petitioner was suffering from renal stone, i.e., stone in the kidney. The 2nd respondent suggested laser treatment

and assured complete cure without medicines and operations. The 2nd respondent directed the petitioner to remit a sum of Rs.8,500/ - towards surgeon ''s fee, equipment charge, anesthesia charge etc. The petitioner was admitted in the theatre at 08.00 a m on 06.06.2002 and after two hours, laser treatment was completed and discharged on 07.06.2002. At the time of discharge, the 2nd respondent advised him to come again after two months. In the meantime on 28.07.2002 the petitioner again experienced acute pain. On the same day the petitioner again met the 2nd respondent and he was admitted to the hospital and again x -ray was taken. In the x-ray report, it was found that the stone was not removed completely.

4. THE 2nd respondent again conducted laser treatment and discharged the petitioner on 31.07.2002. There was, however, no relief to the pain of the petitioner even after the two laser treatments as assured. The petitioner met the 2nd respondent again on 10.09.2002. An x -ray was taken. After verifying the x -ray, the 2nd respondent prescribed certain medicines and advised to take the medicines for three months. The petitioner purchased the said medicines from the 1st respondent ''s medical store. On reaching home with the medicines the petitioner remembered the advice given by the 2nd respondent that the petitioner ''s disease cannot be cured by taking medicines. Therefore, he did not take the medicines and returned the medicines to the 1st respondent ''s medical store. On the same day, the petitioner thought of taking a scan again from the very same scan centre originally suggested by Dr Rajan, General Hospital, Ernakulam in order to ascertain whether any damage was caused to kidney. In the report, it was found that the kidney was normal, whereas the kidney stone had not been fully removed. In the scan report 9 x 4 calculus could be seen in the right mid ureter, just below the level of the right common lilac vessels.

5. THE petitioner again met Dr S G Rajan of General Hospital on 17.09.2002. He examined the petitioner and verified the scan report and certified that the petitioner has right ureteric calculas now. On the same day itself Dr S G Rajan referred the petitioner to Dr Appu Thomas, Professor and Head of Urology, Medical College, Kottayam.

6. THE petitioner met Dr Appu Thomas, Professor and Head of Urology, Medical College, Kottayam, on 19.09.2002. Dr Appu Thomas examined the petitioner in detail and found that the petitioner had ureteric calculus and prescribed certain medicines. The petitioner is now undergoing treatment under Dr Appu Thomas.

7. THE petitioner then prayed that the District Forum: (i)Direct the respondents to refund an amount of Rs.15,000/- towards the payment made by the petitioner within 12% interest;

(ii)Direct the respondents to pay an amount of Rs.2,00,000/- as compensation to the petitioner for the financial loss, mental agony and physical pain caused to him;

(iii)Direct the respondents to pay the entire cost of those proceedings.

8. IN their reply before the District Consumer Disputes Redressal Forum, Ernakulam, (''the District Forum''), admitted that the petitioner was referred to the Urology OPD of Lourdes Hospital, Kochi on 28.05.2002 by Dr Rajan, General Hospital, Ernakulam as a case of pain right side of abdomen since one month. He had an ultrasound report showing a right side kidney stone of 1.3 cm. The second opposite party examined the case and ordered an x-ray KUB which also confirmed right kidney stone nearly 1 cm. He was given the various options for treatment of this stone and he opted for ESWL (Extracorporeal Shock Wave Lithotripsy), a technique by which electromagnetic waves are passed from outside the body to powder stones in the kidney or ureter. Accordingly, he was posted for ESWL on 07.06.2002 and was asked to come for admission on 06.06.2002.

9. THE petitioner got admitted in the Urology Ward of Lourdes Hospital, Kochi on 06.06.2002 and the routine tests done were normal. He was subjected to ESWL treatment on 07.06.2002 (and not on 06.06.2002 as alleged). 2500 shock waves were given and the stone appeared to have been partially fragmented. The petitioner was discharged on the same day with medicines and pain killers and asked to report after one month for repeat x -ray and further treatment with ESWL. The petitioner reported to the OPD on 09.07.2002 and he had no symptoms at that time. Since he was not sure whether he had passed the stone fragments, the complainant was asked to take medicines for two more weeks and come for a repeat x -ray KUB.

10. THE petitioner reported on 28.07.2002 to the casualty with pain right side of abdomen and got admitted in the Urology ward. Since, it was a Sunday; the Assistant Urologist examined the patient and prescribed medicines for alleviating pain. The 2nd respondent examined the patient on the next day and advised an x -ray KUB, which showed that the earlier stone had fragmented and only fragment of the size of 0.7 cm was remaining. This fragment had also descended to the ureter to a lower level (upper ureter). Since the petitioner had pain, he was subjected to one more sitting of ESWL (3000 shock waves) on 30.07.2002 and discharged on 31.07.2002. He was asked to take medicines for one more month and report after that.

11. THE petitioner reported only on 10.09.2002 in the OPD and the x -ray KUB taken on that day showed that the stone had further become smaller and descended to a lower level in the ureter. Since the size of the stone was very small, he was advised to take only medicines and report after three months (if there were no symptoms) or earlier (if symptomatic). The patient did not visit the Hospital afterwards.

12. ESWL is a non-operative treatment of stones in the kidney and ureter and involves fragmentation of stones by passing electromagnetic waves from outside the body. There is no removal of stones as alleged. There is limitation to the number of shock waves that can be given in one sitting (maximum of 3000 shock waves). The smaller stone fragments will pass out through urine. This is

sometimes not even recognised by the patient. The larger stone fragments will descend to the ureter and will eventually pass out through urine, require further sessions of ESWL or even endoscopy for removal, based on repeat x -ray, KUB taken after one month. In the case of the petitioner, it was obvious from the size of the residual stone fragment that the treatment was effective in the first session and even the stone descended to the ureter. The second session of ESWL was also effective and the stone further became smaller and descended to lower ureter. Smaller stones in the lower ureter are likely to pass out through urine and normally a waiting period of upto three months is allowed. Patients are asked to consume medicines during this interval period and have pain killers if necessary.

13. THE petitioner as per the complaint filed, did not take any medicines as advised by the 2nd respondent on 10.09.2002 and even returned the medicines. It is understood that the petitioner reported back to Dr Rajan, who ordered an ultrasound scan to be done. Ultrasound also confirmed that the stone had reduced in size and descended to the ureter. Moreover, the consultant to whom he was then referred to (Dr Appu Thomas, Professor Medical College Hospital, Kottayam) also prescribed only medicines after examining and investigating the patient. This clearly showed that there has not been any negligence on the part of the respondents. The treatment was effective, progress of the stone was closely monitored and necessary medications were given at appropriate times. The second consultant also suggested only medicines to the petitioner, since the stone was very small and was likely to pass out through urine spontaneously.

14. THE District Consumer Disputes Redressal Forum, Ernakulam (''the District Forum'') vide its order dated 03.09.204 while allowing the complaint has observed as follows: "The extra corporal shock wave lithotripsy uses sound waves to break a kidney stone small pieces that can more easily pass into the bladder. The person lies on a water -filled cushion, x -rays or ultrasound tests are used to precisely locate the stone. High energy sound waves pass through the body without injuring it and shatter the stone into small pieces. These small pieces move through the urinary tract an out of the body more easily than a large stone. The evidence would show that when the size of stone was 13 x 6 mm, the 2nd respondent used 2500 waves whereas while it was 9 x 4 mm he used 3000 waves. The explanation given by him for this is that the stone had come down from the kidney. There is no authority that in such circumstances more waves are to be applied. There is no case for the opposite parties that the stone had moved for away from the kidney. Therefore, it was possible to push the stone back into the kidney with ureteroscopy so that it can be treated with ESWL. This has not been done by 2nd opposite party. There is no case for him that it was not possible to be done.

The counsel for the complainant has relied upon the decisions tap orted in Adoration Convent v Cicily (2000 (i) KLT 84) and Laxman v Trimbak we find that there was deficiency in service on the side of the opposite parties.

In the result, we allow the complaint as follows. We direct the opposite parties to

refund to the complainant Rs.12,000/- towards treatment expenses pay him a compensation of Rs.12,000/ - and cost of Rs.1,500/ - within a period of one month from the date of receipt of copy of this order".

15. AGGRIEVED by the order of the District Forum, the respondents filed an appeal before the State Commission. The State Commission vide its order dated 24.09.2011 has noted that: "7. The counsel for the appellant has pointed out relying on Campbell ''s Text Book of Urology VIth edition 2001 that it would not be possible to visualize the stones as fragments after executing ESWL as immediate post SWL radiograph following the procedure is not helpful to predict the success as the fragments are intimately packed together(supra at page 2167). The counsel has also pointed out that as evident from Ext.B1 case sheet 2500 shock waves were inflicted when the stone was in the kidney and 3000 shock waves when the stone was in the uretar. As kidney is more vulnerable less number of shock waves are inflicted and more shock waves when the stone is in the ureter. The above is the established procedure (op.cit page 2167). It was pointed out that pushing back the stone to the kidney is not the right procedure as in situ ESWL is the well accepted therapy for ureteral stones and that the push back technique adds a cumbersome extra procedure for the patient (American Urological Association (AUA) Update 2001). It is also pointed out that relying on Campbell ''s Text Book of Urology, supra at page 2165 that an appropriate length of time after ESWL should be allowed to elapse before declaring that a patient is or is not stone free. Three months is most often the time required, in the instant case it is pointed out that DW3 Dr. Appu Thomas did not conduct any further ESWL and only prescribed medicines. The complainant consulted PW3 without waiting for sufficient period so that the stone will be pushed out through the urine. It is pointed out that Dr. Appu Thomas also only prescribed medicines ie the pain killers and anti -inflammatory drugs It is pointed out that the complainant has no case that the stone remains still in the ureter.

8. PW2 is Dr. S. G. Rajan, General Surgeon who referred the complainant to the Urologist, i.e, PW3 Dr. Appu Thomas. DW1 is the 2nd opposite party Urologist. It is the case of DW1 that the small fragments that has passed into the ureter would have gone out through the urine and that the complainant did not wait and immediately left his treatment and consulted PW3. PW3 the Professor of Urology, Medical College Hospital, Kottayam in his testimony has not implicated the 2nd opposite party doctor. He has stated that the medicines are sufficient and that it is not possible to conduct another ESWL in the position of the stone in Ext.A10 diagram, Ext.A10 is the prescription of PW3 wherein there is the sketch noting the location of the stone. PW3 has stated that the part of the stone is still in situ. He has also stated that it cannot be stated that the procedure done by 2nd opposite party doctor has failed. PW1 has not given a direct answer to the question as to why the stone could not be completely removed by ESWL executed by the 2nd opposite party. In the re -examination he has clarified that as on 19.9.02 the stone has not been completely removed. He has not stated that the complainant is still undergoing treatment. As contended he has not

produced any records of treatment as to the treatment if any being under gone by him subsequently ie after the administration of medicines by DW3.

9. In the circumstances and in view of the observations in the Campbell ''s Text Book of Urology we find that it cannot be held that there is any amount of negligence on the part of 2nd opposite party doctor in the treatment imparted to the complainant.

10. In the result the order of the Forum is set aside and appeal is allowed".

16. HENCE , the present revision petition.

17. WE have heard the learned counsel for the parties and have also carefully gone through the records of the case. The main ground for the revision petition as per the counsel for the petitioner is that the petitioner was not informed that he would require repeated ESWL (Extracorporeal Shock Wave Lithotripsy). He drew our attention to the order of the District Forum and urged that the District Forum had correctly allowed the complaint. Counsel for the respondent no. 1, however, stated that in the complaint itself that the petitioner had admitted that after the first ESWL held on 07.06.2002, since the petitioner had suffered pain he had gone to respondent no. 2 again on 10.09.2002 and was advised certain medicines. The petitioner had purchased the said medicines, he, thereafter, returned the medicines and did not take the medicines as advised. He also drew our attention to paragraph 7 of the State Commission ''s order which explained the ESWL procedure in detail and pointed out that at least three months '' time is required to elapse before declaring that a patient is or is not stone free. Further, Dr Appu Thomas to whom the patient went also prescribed only medicines, i.e., the pain killers and anti -inflammatory drugs. Counsel for the respondent no. 2 also reiterated that the petitioner had to wait for three months and had to take the medicines as prescribed and advised, which he did not do so.

18. ONGOING through the record we find that the petitioner has no -where in his complaint specifically stated as to how the respondents are guilty of deficiency of service except for the fact that the he was not told that he may require second ESWL and that after the first ESWL he felt pain and he further learnt that the stone had not been completely removed from his system.

19. IT is an admitted fact that the ESWL is an accepted method of treating kidney stones and as per the reply of the respondents before the District Forum the petitioner had opted for this method of treatment. The main advantage of this treatment is that a patient may be treated for kidneys stones without surgery. As a result, complications, hospitals stays, costs and recovery time are reduced. However, the stone fragments are occasionally left in the body and additional treatments are needed. It is also an accepted fact that some pain may occur when the fragments pass through the urinary tract to be dispelled with urine, which begins soon after treatment and may last up to four to eight weeks. Oral pain medication and drinking lots of water help to relieve symptoms. Sometimes, the stone is not completely shattered and additional treatments are

required. In 70 to 90% of cases patient are found to be free of stones within three months of treatment. In the case of the petitioner it is an accepted fact that through the first ESWL had crushed the stone into fragments which had been expelled and only one fragment of the size of 0.77 cm was remaining. The fragment had also descended to the ureter to a lower level. Since the petitioner had pain, he was subjected to one more sitting of ESWL on 30.07.2002 and the patient was discharged on 31.07.2002. He was asked to take medicines for one month and report after that. Thereafter, the petitioner reported to the respondents on 10.09.2002 in the OPD and X -ray KUB taken on that day showed that the stone had further become smaller and descended to a lower level in the ureter. Since the size of the stone was very small, he was only advised to take medicines and report after three months or earlier, if required.

20. IT is also an admitted fact that on the subsequent consultation with Dr Rajan and Dr Appu Thomas, the petitioner was only advised medicines as the stone had reached the lower level of ureter and there was no reason to believe it would not be expelled in time.

21. COUNSEL for the petitioner drew our attention to a judgment of this Commission in K M Madappa (Dr) and Anr. Vs Karnataka State Consumer Redressal Commission and Anr (RP no. 244 of 2007) decided on 04.02.2011. The facts of the case are not applicable to the case on hand.

22. IN view of the above, the petitioner is not able to establish any cogent evidence that there was any deficiency of service on the part of respondent no.1 and 2 in the treatment imparted to the petitioner.

23. THE Hon ''ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed: "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

Thus, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any

infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed with no order as to cost.

