(2001) 09 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

Prafulla Kumar Das — APPELLANT

Vs

APOLLO HOSPITALS — RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Citation : 2002 1 CLT 275 : 2002 1 CPC 349 : 2002 2 CPJ 106

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is by Prafulla Kumar Das father of the child. First respondent is the hospital where surgery of his child was performed. Respondent Nos. 2-5 are the Doctors who attended on the child.

2. DAS is aggrieved, his only child, a seven years old son, died. He puts the blame on the respondents who are five, in numbers. His complaint is that the death of his child was on account of medical negligence on the part of the respondents. No doubt, grief of the parents for the loss of their only child cannot be expressed in words. But then moot question is : If the death of the child is on account of any negligence on the part of any of the respondents. The child, Niladari Bhusan, it appears, was having problem in his heart from his very birth. It is stated by Das that when the child was one year old, he suffered from cold and when he consulted the local doctor, he was told that the child had some unusual heart beat sound and that he was suffering from V.S.D. (Vascular Septic Defects). Doctors at S.C.B. Medical College and Hospital, Cuttack (Orissa) were of the opinion that the child did not require any surgery and that as he grew, he would be fully cured of its own. When the child was of seven years of age and was school going, Das learnt that one Dr. K.P. Mishra, respondent No. 3 who was a renowned Oriya doctor and came from Orissa, the State to which Das belonged, was working as a Cardiologist in the Apollo Hospital, Madras. Complainant had also learnt that the son of his colleague had also undergone open heart surgery at Apollo Hospital, Madras which was successful. Das,

therefore, sent all the papers of the child to Dr. Mishra at Madras. That was in July, 1991. Das said that he wanted to consult Dr. Mishra to clear his doubts about the suspicions of the local doctor about the illness of his child, Dr. Mishra being of Orissa could be easily contacted and that there would be no communication gap and that Das would get a correct and proper opinion. Dr. Mishra sent a letter to Das on 7.9.1991 to contact him at Apollo Hospital, Madras with the child for a detailed check-up. Dr. Mishra also wrote that from the reports sent by Das, the complainant, it did not appear to him that the child required any surgery. But then he added that he would like to see the child before he could make any further comments. Das then took the child to Madras on 28.12.1991 when Dr. Misra after examining him advised open heart surgery immediately as according to him the child was suffering from Supra Valvular Aorta Stenosis. Das came back and after making necessary arrangements for the money for fee of the doctor and other expenses, came to Madras on 7.4.1992 accompanied by his wife and the child. Child was admitted in the Apollo Hospital, Madras, the following day. Angiogram (a radiographic image of a blood vessel after injection of contrast medium) was done on 10.4.1992 by Dr. K.N. Reddy, respondent No. 4. According to the respondents, child was found to have a very complex and extremely rare congenital cardiac anomaly. There were in fact two anomalies. First was a severe supra valvular aortic stenosis i.e. a severe narrowing to the outlet of blood from the left side of the heart at the beginning of the Aorta, (the main arterial channel of the body). This obstruction was so severe that the left ventricular pressure was 220 mm. hg., which is more than double the normal pressure. This, according to the respondents, is not compatible with normal life and the child could not have survived for long with this defect. In addition, the arch of the Aorta was found to be diffusely hypoplastic i.e., underdeveloped. It is stated that Dr. M.R. Girinath, the second respondent explained to Das that the supra valvular defect which was the more severe defect could be repaired by surgery and that the diffuse hypoplasia (incomplete or underdeveloped organ or tissue, usually the result of decrease in number of cells) of the arch which was less amenable to surgical repair would be left alone.

Open Heart Surgery was performed on the child on 14.4.1992 by Dr. Girinath, assisted by a team of doctors. Respondents took only 42 minutes to perform the surgery and the immediate post-operative course was satisfactory. However, Das says that the child was taken to the operation theatre at about 11.30 a.m. and was kept there till 7.30 p.m. He was not told why it took so long. On 24.4.1994, second Angiogram was done by Dr. Reddy. Child was discharged on 30.4.1992. Operation notes were given to Das on 4.5.1992. He left for Orissa on 5.5.1992 with the child and his wife. According to Das, child on 18.5.1992 suffered severe pain in neck and arms and was taken to S.C.B. Medical College, Cuttack (Orissa), where he died on 24.5.1992. Das imputes negligence on account of the following factors : (1) Before operation, all the reports were within normal range. But, after the operation from 15.4.1992 till 21.4.1992, the investigation reports showed infection. On 21.4.1992, investigations were stopped. As prudent doctors

and established hospital, respondents should have continued the investigations till everything was in normal range. The patient was discharged in an unprofessional manner.

(2) When details of investigations showed that on 21.4.1992, hemoglobin was at 7.6%, the patient should have been given blood transfusion. This was not done until the patient was discharged. Doctors have, thus, failed in their duty.

(3) There was lot of discrepancy in the first and second Angiogram tests. After the second Angiogram, respondents had recommended for balloon angioplasty. It was only after the first operation that the respondent informed Das that the child needed two stages of operation. That the child needed two operations, was not told to Das and had he known that, he would not have gone for the operation at all.

(4) Second Angiogram was done only by way of academic interest when it was not necessary. This, the respondent did for advancement of their knowledge. In this connection, Das referred to letter dated 29.4.1992 of Dr. Mishra which he wrote to the Managing Director/Joint Managing Director/Chairman of Apollo Hospital, the first respondent.

(5) Das was not given the discharge papers on 30.4.1992 which were given to him only on 4.5.1992 after four days of discharge. Surgery/operation notes were not prepared in time. (6) Respondents did not tell Das as to the gravity of the situation knowing fully well that the life of a child was in great danger and that he might require emergent medical assistance. Rather, he was told to come after two months when Doctor Mishra himself advised him to come after four months.

3. IN support of his allegations, Das, the complainant, has not produced any expert evidence nor he has based his conclusions from any standard medical treatise. To make allegation of negligence against the practising doctor, is a serious matter. It has not been disputed about the expertise and knowledge of the attending doctors, the respondents 2-5, herein. Evidence in this case have been led by means of affidavits. Respondents have filed their affidavits denying the allegations of the complainant. They say, they performed their duties as a medical-men in most professional manner and that it was most unfortunate that allegations of medical negligence have been made against them. Das has referred to the letter dated 29.4.1992 of Dr. Mishra written to JMD/MD/Chairman of Apollo Hospital stating that "they had to repeat the Angiogram of the child and mainly for academic interest and that the doctors did not claim any professional charges". It was requested "could you kindly waive off the material cost charges". From this, Das says, the second Angiogram was not necessary and that his child was used to conduct tests for Doctors for their own knowledge. We think it is most uncharitable remark as it comes from Das. Here is Dr. Mishra who belongs to Orissa, in whom, Das had full faith and here is Dr. Mishra who went out of way to help Das and wrote a letter to the Chairman of the Apollo Hospital to save expenses for Das. He made a case for waiving off the material cost

charges for the second Angiogram. Dr. Mishra has said that the purpose of his writing that second Angiogram was for academic interest was meant not to charge the material costs from Das. According to the respondents, the second Angiogram was done to assess whether anything should be done for the diffuse hypoplasia of the arch. It showed an accurate and perfect repair of the supra valvular stenosis. It was showed that there was a residual pressure gradient across the hypoplastic arch and after much discussion it was decided that this could be best treated at a subsequent date by balloon angioplasty. Child was checked prior to his departure for Orissa on 5.5.1992. They say it is unfortunate that the child was not brought to Madras, as advised, when he developed pain on 18.5.1992 at Cuttack. If he had been brought back immediately perhaps the child could have been saved. Refuting the allegations it was stated that there was no negligence and in fact a lot of care was lavished upon the child for a total professional fee of Rs. 9,800/- for the entire team for a very complicated open-heart operation.

4. DR. Girinath has stated that surgery was successful and the repair was excellent. Respondents have referred to the allegation of Das that after shifting the child to the ward, White Blood Cells (WBC) count was abnormally high in the blood tests done on 14.4.1992 to 21.4.1992. DR. Girinath has stated that after any open-heart surgery where the patient has been connected to heart lung machine there is a non-specific generalised inflammatory response that produces a raised WBC Count and fever in the first few days after surgery. In this connection, he referred to the book - Surgery of the Chest - Volume 1 - (sixth edition) by David. C. Sabiston Jr. and Frank C. Spencer). DR. Girinath then says that in any individual who has had open-heart surgery a raised WBC Count with a raised temperature can indicate infection. However, as this is not necessary so in-patients who have had open-heart surgery microbial cultures of urine spurtum, blood and exudates is done to exclude infection. All these tests were carried out and were all negative. The raised blood count, therefore, did not have much significance as the child showed continuous improvement in his general condition and became affiable. It was submitted that clinical assessment is far more informative than non-specific laboratory tests. The child was daily assessed by a pediatrician, cardiologists, cardiac surgeons and the physician attached to cardiac surgery. In regard to the allegation that the child was discharged with low hemoglobin. Dr. Girinath in his evidence has clearly stated that it is now standard practice all over the world to accept lower hemoglobin rather than administer blood or blood products with all their attendant risks. The child was discharged with hematenics to bring up the hemoglobin level. On the allegation that Das was given the operation note only on 4.5.1992 and not on the date of discharge on 30.4.1992, it was submitted that this could not by any stretch of imagination be construed as negligence and/or deficiency in service. Dr. Girinath explained in his affidavit as to why the operation note could not be given on the date of discharge. When the complainant himself admitted that the child was normal at the time of discharge he could not have any grievance. Complainant has not

shown as to how he was prejudiced by this minor delay in handing over the operation note. Complainant could not, therefore, maintain a complaint alleging negligence and/or deficiency in service.

5. NO doubt, negligence is a multi-faceted term. It may suggest merely the single lapse, the error to which all individuals are prone or even a general inability to perform one''s professional skills and carry out once responsibilities. It is not disputed that respondents 2-5 are a competent team of surgeons and cardiologists. In our view, in the circumstances, they were correct in their diagnosis and were justified in the treatment which in their opinion was the best for the child. There is nothing on the record by way of any expert evidence to challenge their version or that they deviated from any common practices. We accept the version of the respondents that in the very beginning, Das was informed of the diagnosis with which the child suffered and it was explained to him that the supra valvular defect which was the more severe defect could be repaired by surgery and that the diffuse hypoplasia of the arch which was less amenable to surgical repair would be left alone. Child had a complex and a rare form of congenital cardiac anomaly. The surgery was successful and the child was recovering well. Proper care and attention was given to the child for his treatment. Das was informed that child will be brought back for balloon dialatation to relieve the obstruction in the remaining residual underdeveloped arch of the Aorta. We are of the view that Das was well aware the correct position. Dr. Reddy had advised him to bring the child in cases of any problem. After the child developed pain on 18.5.1992, he could have been brought to Madras and, perhaps, he could have been saved. Das has failed to prove allegation of any medical negligence levelled against the respondents. We do not think that the respondents could be accused of any deficiency in service. As noted above, Das has not brought on record any evidence to support his version. His observations from the reports of the child are not correct and are not substantiated. It is unfortunate that the child has died but no responsible doctor would guarantee the outcome of any treatment. Cases of professional negligence, particularly, the medical negligence almost invariably turn on the expert evidence. There could be difference of opinion but even that has not been brought on record by the complainant by leading any expert evidence or with the help of some standard medical treaties. Burden of proof lay squarely on the shoulders of the complainant to prove negligence on the part of complainant which he has failed to discharge. Rather, the evidence shows that the respondents were competent professional persons and they performed their duties as a professional men with proper care and attention and in the best interest of the child. There is no merit in the complaint. We dismiss the same. In normal circumstances, we would have imposed costs on the complainant but in the present case considering the suffering of the complainant, though for no fault of the respondents, we may leave the parties to bear their own costs. Complaint dismissed.

