

(1997) 01 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

PRAVEENBHAI KHUBCHANDBHAI SONI

APPELLANT

Vs

RAJENDRA R.SHAH

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Citation : 1998 2 CPJ 627

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Complaint allowed

Judgement

1. COMPLAINANT Mr. Pravinbhai Soni is the father of an infant Chintu (3 months) and he has claimed Rs. 5,00,000/- plus as compensation from Dr. Rajendra Shah, for alleged negligence and deficiency in treating the said infant who died during the treatment on 30.9.1991 at 05.30 hrs. (page 2). COMPLAINANT had also preferred criminal complaint against respondent Dr. Shah and this complaint was dismissed by Metropolitan Magistrate (page 14).

2. MR. Pravinbhai K. Soni, the father of infant Chintu alleges (pages 1 to 9) that his infant son was taken to Dr. Shah's Hospital in Raipur on 27.9.1991 at about noon for symptoms of fever, respiratory difficulty, etc. Dr. Shah saw the patient at his hospital on 27.9.1991 in the afternoon and advised hospitalization. His diagnosis was Bronchiolitis. Patient was admitted and treatment was executed by non-qualified compounder, oxygen was not properly given. On 29.9.1991 during night round Dr. Rajendra Shah noted that the patient had deteriorated further. Doctor saw patient, advised treatment and left (page 67) leaving child under the care of unqualified person. Though condition of child was serious and drugs that were used including Lanoxin were capable of slowing pulse rate, etc. patient was not monitored. Though diagnosis of viral encephalitis was there, Neurologist was not called or consulted. The child remained without proper care, treatment and without the help of Neurologist and child died. Dr. Shah came only after the death of the child to issue death certificate (page 69A). The complainant also alleges that no attempt was made to establish the diagnosis or cause of death. Child was admitted as a case of Bronchiolitis and died as presumed result of viral

encephalitis a condition for which Dr. Shah is neither expert nor did he care to treat the child for encephalitis nor did he express his inability to treat the child. The complainant also states that case paper though asked much earlier were produced only very late (page 77) on 8.7.1996 Complainant further states that Dr. Rajendra Shah in investigation by police has not mentioned the treatment by Dr. Rajesh Shah whom he now say he had delegated his work (page 18). Though the opponents have claimed that they see patients three time a day each, the same has never happened (page 77). The Sunday that fell during the treatment of child the opponent did not see the child as required of him. The opponent has made differing statement regarding his availability at his hospital in written submission and in cross examination and record produced by opponent himself (pages 66, 77). The opponent in his written statement states about his qualification, experience and his various attachments as Consulting Paediatrician and his availability at the different palaces and times of availability (page 58) Dr. Rajendra Shah also concurs that Dr. Rajesh Shah who is MBBS, D. Ped. Works as his Assistant and has his own nursing home. Dr. Rajendra Shah also states that he and Dr. Rajesh Shah see the patients six times a day (three times Dr. Rajendra Shah and three times Dr. Rajesh Shah [pages 70, 73]). That his compounder Laxmanbhai is a qualified person to administer the directed treatment and that Said Laxmanbhai is well experienced. Laxmanbhai's certificate of his qualification is produced as evidence (pages 66, 68). The said Laxmanbhai died last year. It is further claimed that patient was seen often and necessary changes in treatment were made as reflected in case records (page 77). The oxygen cylinder and oxygen giving apparatus were proper and adequate (pages 29). Patient's relatives were explained the gravity of situation at the time of admission and subsequently also (page 25). That treatments given were scientific, adequate and correct (argued). After diagnosis of encephalitis patient's condition was very serious and investigations were not possible. However, whatever investigations could be done safely were done. Dr. Rajendra Shah says he has given best possible treatment and child died in natural course of disease. He was never negligent and that complainant is not entitled to ask for any compensation (page 34).

On perusing evidence, we do not find evidence to see that patient was see three times a day by Dr. Rajendra Shah and/or Dr. Rajesh Shah (page 77) as claimed. Patient was diagnosed and admitted as Bronchiolitis and viral encephalitis comes in picture only on the night of death of the child. There is no dispute that Neurologist was not called. There is no reason given to say why Neurologist was not called. Dr. Rajendra Shah has not stated that he is competent to treat such Neurological disorder. Dr. Shah says that clinical monitoring of patient was done as and when required but there is no mention as to whether patient was monitored for pulse, etc. by any monitor or by anybody. Dr. Rajendra Shah also states that on 29.9.1991 "he saw the patient, patient had deteriorated at about 9.30 p.m., he advised the treatment (presumably to Laxmanbhai) and left (page 67)", He returned only after patient was dead on 30.9.1991 at 5.30 a.m. (page

69A).

3. IT is undisputed that patient was admitted under personal care of Dr. Rajendra Shah on 27.9.1991 in the afternoon. Dr. Rajendra Shah saw patient and subsequently as per records, we wonder if it was advisable to leave such serious child under the care of Laxmanbhai who from records do not seem to be qualified to treat the patient-infant of such serious disease and in such serious condition (the opponent had sufficient time to prove the credentials of Laxmanbhai but has not cared to come out with evidence to prove conclusively the eligibility of said compounder to treat such a serious infant. Dr. Shah has not correlated or explained Bronchiolitis associating with viral encephalitis. Dr. Shah has not produced either literature or expert evidence to prove his defence of proper treatment or management. Dr. Shah has not disputed non-availability of monitor or lack of procedure of monitoring. Dr. Shah has not cared to explain how disease process progressed, mode of death or for that matter to prove that child suffered from viral encephalitis. Dr. Shah does not say if Bronchiolitis itself was sufficient to cause death of patient. Dr. Shah does not explain why he "left" (as stated by him - page 67) when as per his own statement patient had deteriorated and was serious. He knew he had to leave the child under the care of Laxmanbhai. He does not say why he did not communicate or asked either directly or through his staff his Assistant Dr. Rajesh Shah to take over the management of case. Dr. Rajesh Shah also does not say that he had or had been asked to see, monitor or treat the serious and critical child and the events of occurrence from night the child deteriorated to the death remain unexplained. Dr. Rajendra Shah does not believe the need for continuous monitoring critically ill child who received injection which had direct effect on pulse rate, etc. as claimed by complainant (page 68). The complainants claim that child who had respiratory difficulty and needed suction could not be carried out by unqualified person like Laxmanbhai, more so in a case of infant like complainant's in critical condition. It is a common knowledge that infants do need technically skilled person to suck out secretion from lungs and this need is enhanced in critically ill infant.

4. PERUSING further we are of the opinion that there was deficiency in services offered to the said infant Chintu by Dr. Rajendra Shah. Dr. Rajendra Shah therefore, is liable to pay compensation. We have given considerations to the morbidity and mortality in cases like that of infant. We have also given consideration to average life expectancy in infancy and childhood and services provided by Dr. Rajendra Shah. In medical cases demarcating line between negligence and deficiency is very thin and arbitrary and looking to all available documents and evidences we feel deficiency in service would be more appropriate word to use rather than negligency. From available records and arguments it is apparent that Insurance Company is not joined as party. The opponent or his learned Advocate have remained silent on joining Insurance Company as co-defendant or indemnifier. We, however, leave to Dr. Rajendra Shah if he wishes to initiate any action on Insurance Company.

5. CONSIDERING above all factors, we feel compensation of Rs. 1,00,000/- with interest at the rate of 15% if the amount is not paid within one month will be just and appropriate. We also award the cost of Rs. 2,000/- to the complainant. Complaint allowed.