(1997) 05 NCDRC CK 0119

In the National Consumer Disputes Redressal Commission

P.R.SUMANGI — APPELLANT

Vs

KAIRALI MEDICAL CENTRE — RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Citation : 1997 3 CPR 418 : 1998 1 CPJ 203

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Complaint dismissed

Judgement

1. THIS petition is filed under Section 12 of the Consumer Protection Act, claiming compensation of Rs. 8,50,000/- attributing medical negligence on the part of the opposite parties.

2. THE complainant is the mother of one S. Lakshmi, aged 9, studying in 4th standard in the Lower Primary School, Nedumankavu. On 5.11.1994, Lakshmi fell on the floor of the School causing swelling on the left hand knee. Immediately, the complainant and Smt. Vijayamma who is a teacher of the School took Lakshmi to the first opposite party hospital, and the doctor who was present at that time did some first aid and prescribed certain pain killing tablets. On 18.11.1994 me child developed pain on her left hand knee and there was swelling also on the left hand. THE complainant''s cousin Vijayan again took the child to the first opposite party hospital Kairali Medical Centre and the second opposite party was present at that time. THE doctor asked them to take x-ray immediately. THE child was taken to the X-ray Centre al Christian Medical Centre, Pathanamthitta and they again went to the 2nd opposite party with x-ray and the 2nd opposite party asked them to bring plaster. Accordingly they brought plaster from Adoor and plastering was done on 19.11.1994 at 8 p.m. Soon after the plastering was over, the hand started swelling up and the golden bangle worn by the child could be removed only by cutting. THE child also developed pain in the hand and second opposite party took 3 or 4 injections to reduce the pain. THE colour of the palm became black. THE second opposite party applied ointment and said that the black colour was due to application of ointment and assured

them that it can be removed by applying infra-red. At that time there was no blood circulation and the hand became paralysed. THE matter was reported to the office bearers of first opposite party and the Secretary of the first opposite party imediately came and asked the second opposite party why it happened. THE second opposite party shouted at the complainant and asked her to get out of the room and told her that he is a doctor and knew what has to be done. She requested the opposite party to hand over the child so that she could take the child to some other hospital. THE second opposite party shouted at her again and asked her to take the child anywhere and he refused to give any reference letter or case sheet. So many people gathered and somebody brought a car and they took the child to NSS Medical Mission Hospital, Pandalam. After examination Dr. Jacob of NSS Medical Mission Hospital told them all these happened because the plaster put by the second opposite party was too tight and due to that blood circulation was completely stopped. He also told them that the only remedy is to cut and remove the hand from the portion of the plastering. However, after an operation Dr. Jacob advised us to take the child to a specialist hospital at Ernakulam. Dr. Rajappan operated the child and she was undergoing treatment of Dr. Rajappan as an inpatient till 12.1.1995. She spent more than Rs. 50,000/- for the treatment of the child. THE doctor is still in doubt whether the hand was to be amputated or not. All these happened because of criminal negligence of the second opposite party. THE first opposite party is vicariously liable for the criminal negligence and indifferent conduct of the second opposite party as he was appointed by them without even enquiring the qualification and experience of the second opposite party. THE second opposite party did not possess the required knowledge or expertise in orthopaedic treatment and he has treated the innocent child which caused untold misery and mental agony to the child as well as to her parents. In fact there was no need to plaster the hand since there was no crack on the bone. THE child was discharged from the hospital on 12.1.1995 with advice for future treatment. It is on these allegations the complaint was filed, claiming a total compensation of Rs. 8,50,000/- under different heads. A version was filed by the Secretary, Kairali Medical Centre, Charity Hospital, Angadical South, denying the allegations. It is further stated that the complainant is not a consumer and the first opposite party is a charitable society, registered under the Travancore-Cochin. Literary, Science and Charitable Societies Act, 1955. As per its Memorandum of Association and bye-laws the society is to be represented by its President in all legal proceedings by or against the Society. The Secretary is unnecessarily made a party. The Society is functioning as a charitable society without any profit motive and no fee for the treatment is expected or charged. The second opposite party was working on probation basis from 14.11.1994 to 21.11.1994. His service was terminated on 21.11.1994. On 5.11.1994 the child came to the Kairali Medical Centre which was run by the first opposite party. She was given first aid by Dr. Vincent and he asked her parents to take the child back, and no other complication had arisen. It is only a primary health centre and there is no equipment there to give speciality treatment. No treatment is given at the Medical Centre for ailments

which required speciality treatment. Moreover no treatment was given to the girl at her knee as alleged in the petition. It is further stated that the authorities of the first opposite party asked the parents of the child to take her to Medical College Hospital or any other speciality hospital. Then the complainant insisted that her child to be treated in the Medical Centre itself as her husband V. Sasidharan is a Founder Member of the Society, which runs the Medical Centre. The complainant herself brought medicines from outside and influenced the second opposite party and voluntarily accepted treatment. That was done without the knowledge and consent of the first opposite party on 19.11.1994. 0n 20.13.1994 when the authorities came to know about the incident the complainant agreed to take the child back and she took back the child. There was absolutely nothing wrong with the child when she was discharged from the Medical Centre. Only paracetamol and pain killer tablets and injection were given, all of which were absolutely harmless. The allegation that there was no blood circulation and the hand became paralysed etc. are absolutely false and hence denied. The left hand of the child was already polio affected from early childhood and she was handicapped.

The allegations in paragraph 5 of the opposite party were also denied as the opposite party had no knowledge about this. The NSS Medical Mission Hospital, Pandalam, is not a speciality hospital. It is alleged in para 5 that an operation was conducted at the NSS Medical Mission Hospital by Dr. Jacob and then he advised the complainant to take the child to a specialist hospital at Ernakulam. This clearly indicates that the operation was conducted by a non-specialist and complications develped as a result of this operation. Another operation had to be conducted only because of the mistake in the operation conducted at NSS Medical Mission Hospital. What is seen on the child is only a scar due to the operation and there is no other disability. The second opposite party produced certificates of qualification and experience and on the basis of the certificates he was appointed in the Medical Centre on probation and there was nothing wrong with the treatment given by him and the complainant voluntarily accepted treatment from him without the knowledge and consent of the first opposite party. Hence the first opposite party is not vicarious liable. The compensation claimed is also very high. In the circumstances it was prayed that the complaint is liable to be dismissed.

3. ON behalf of the complainant PWs 1 to 6 were examined and Exts. PI to P12 were marked. ON behalf of the opposite party RW 1 and RW 2 were examined and Ext. R1 was marked. The following points arise for consideration : 1. Whether the complainant is a consumer ? 2. Whether there is any deficiency in the treatment given to the daughter of the complainant at the first opposite party hospital by the second opposite party ? 3. If so, what is the relief to which the complainant is entitled ? 4. What is the order as to cost ?

4. IT has come out in evidence that the second opposite party expired. Thereupon the complainant filed a petition seeking to delete the second opposite

party from the party array. That request was allowed by this Commission at the risk of the complainant. Point No. 1-There is no clear evidence to show that consideration was paid either to the first opposite party hospital or to the second opposite party for the treatment. The bills produced by the complainant relate to the purchase of medicines and not for consideration for treatment. However PWs 1 to 4 deposed that normally the first opposite party hospital receives consideration for treatment. There is no pleading to that effect in the complaint. Apart from that we do not find any thing to show that the treatment was given for consideration. In the circumstances it would be difficult to hold that the complainant is a consumer. However, we are not going to decide this case only on this technical ground. Pw 1 is the complainant. She spoke in terms of the complaint. She also has filed an affidavit in lieu of chief examination raising contentions in the complaint. Pws 2 to 4 also filed affidavits. However, in our view none of them are competent to speak authoritatively whether there is any deficiency in the treatment given by the second opposite party. Therefore their evidence is not helpful to come to a definite conclusion in regard to deficiency. The evidence of Pw 5 and Pw 6 has been heavily relied on by the complain- ant in support of her case. Pw 5 is Dr. Jacob who treated the child at NSS Medical Mission Hospital. He stated that on 20.11.1994, the duty doctor examined the child at 8 p.m. and the child was brought to him. He further stated that according to history the child had been admitted to some other hospital and plaster of parris was applied to the child and the child developed severe pain and the hand turned blue. When he examined the child he was not in the plaster. The hand and distal point of the palm was blue and radial pulse was not felt. The plaster was extending only to the middle of the left forearm. When he informed the seriousness to the relatives and told them that the bluish part is not viable and the child may have to undergo amputation if by a surgery the blood circulation does not re-appear. Accordingly he took the patient to the theatre and fasiotomy was performed under anaesthesia and after the surgery the radial pulse was feebly felt but the nail and fingers were still blue. After 2 days there was improvement in the blood circulation and the child was referred to specialists hospital Ernakulam. To a question whether the blue colour appeared on account of the tightness of the plaster case he replied that when he looked at the history he found that there is such possibility. In the cross-examination he admitted that he was deposing through a letter of Dr. Rajappan and from memory and the sheet was not with him due to non-availability of information. He also stated that previous history of the treatment given for the child in some other hospital as per the information given by the parents and he has not seen the case sheet of the other hospital. There was no reference letter also. He cannot say anything about the treatment given in the other hospital except what is stated by the relatives. He also stated that there are possibilities of swelling in fresh injury. After plaster cast was put it may get tightened on account of swelling, and such contingencies can normally arise and then the plaster cast would be cut and removed. On further cross-examination he stated that after faciotomy the things improved and for skin grafting he referred the child to the specialist hospital as

such treatment was not there. He could not remember whether he issued any certificate to the child. The blueishness of the finger and nail can occur for various reasons other than tight plastering.

5. ANOTHER important witness examined is Dr. Rajappan of the specialist hospital. He deposed that on 23.11.1994 the child was admitted to the specialist hospital, as per reference letter from the NSS main hospital, Pandalam. There was bandage on the left arm, and when he removed it there was an old ulcer. There was some discolouration of the fingers and elbow, wrist and fingers were not moving. Medicines were given and in order to set right the movement of the ringers physiotherapy was conducted. Thereafter skin grafting was done. That was on 19.12.1994. On 25.11.1994 an operation was conducted which was intended to remove the infections and puss in the ulcer for grafting the skin flesh from the left thigh. Patient was advised to continue physiotherapy. In the course of crossexamination he admitted that the injuries found in arm can happen if faciotomy was done and when he saw the faciotomy wounds it was not closed and it was he who closed it after effecting skin grafting. He had not received any case sheet from the Pandalam Hospital. There is no super speciality at NSS Hospital and the case was referred to him as the doctor at NSS hospital thought that he could manage the case in a proper way. He also admitted that treatment he did was set right wounds and ulcer and discolouration and immobility of fingers which occurred as a result of faciotomy operation. It may be noticed that the evidence of PW 5 is that due to his treatment the child''s condition improved and only for the purpose of skin grafting .the child was sent to the Specialist Hospital. The evidence of PW 6 clearly shows that what is stated by PW 5 is not true. It is also significant that neither the complainant nor PW 5 produced the case sheet of Pandalam Hospital so as to ascertain what are the treatments given from there arid how complications arose. In view of these, it is difficult to say that there is any deficiency in the treatment given by the second opposite party at the first opposite party hospital. Since the second opposite party died and he was removed from the party array, we are unable to gather any evidence in regard to his qualifications. We are saying this because there is an allegation by the complainant that he did not have required expertise or qualification for treating such cases.

6. IN this connection we may also refer the evidence of RW 1, Cherian M. Thomas, who is the Head of the Department, Orthopaedics, Medical College, Thiruvananthapuram. He was working in the Medical College since 1988. Ext. P2 the case sheet of the child maintained at Kairali Medical Centre was shown to him. He stated on perusal of it his opinion is that the injury and treatment may not be related to the injury on 5.11.1994. As a matter of fact it is exactly the case of the opposite parties. According to him a missed fracture in a subsequent injury between 5.11.1994 and 19.11.1994 cannot be ruled out. He also stated that if the injury was sustained on 5.11.1994, the swelling should have been subsided by 19.11.1994 except under unusual circumstances like an infection setting in. No such infection or unusual circumstances can be made out from Ext.

P2. Since there is a gap of two weeks some facts relating to the injuries might have been suppressed by the patient. If plaster is put before swelling developed in a freshly injured limb, swelling can be developed later on inside the plaster and the plaster may become relatively tight. If plaster became subsequently tight it should be cut and removed. The ischaemic contraction can be developed due to various reasons like arterial injury, venous injury, combined arterial and venous injury, external compression, injection of irritant drugs and injury to blood vessels. The ischaemic contraction need not due to tight plaster alone. If the patient is suffering from bleeding disease, ischaemic contraction can occur. From the available details of treatment given in Ext. P2 there is nothing wrong in it. The evidence of this independent expert witness also would show that there is no material to come to a conclusion that it is on account of want of care or negligence on the part of the opposite parties, that the complications arose. As a matter of fact as we have pointed out earlier it is quite possible that the complications arose on account of faciotomy. The foregoing discussion would show that the complainant has not succeeded in establishing that there is any deficiency on the part of the opposite parties. In view of this finding the third point does not arise. We accordingly dismiss the complaint. In the peculiar circumstances of the case, we direct the parties to bear their respective costs. Complaint dismissed.

