(2011) 10 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Radhika Rakesh Nigam — APPELLANT

Vs

Swaraj Naik Naik Nursing Home — RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Citation : 2011 0 NCDRC 661 : 2011 4 CPJ 486 : 2012 1 CPR 341

Hon'ble Judges : ANUPAM DASGUPTA J.

Final Decision : petition dismissed

Judgement

1. THESE revision petitions challenge the order dated 27.09.2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal (in short, ''the State Commission '') in appeals no. 201 and 405 of 2007 filed respectively by the petitioner and the respondent. By this order, the State Commission set aside the order of the District Consumer Disputes Redressal Forum, Jabalpur (in short, ''the District Forum '') holding the respondent/opposite party Dr. (Smt.) Swaraj Naik guilty of medical negligence/deficiency in service and allowed the appeal filed by Dr. Naik while dismissing that filed by the petitioner for enhancement of the amount of compensation awarded by the District Forum.

2. THE main grounds in the revision petitions are the same as the allegations in the complaint that the petitioner filed before the District Forum. The complainant had alleged that she was under the medical supervision of respondent doctor during her pregnancy. In the early morning of 27.03.2002 she developed labour pains and got admitted to Naik Nursing Home (run by the respondent) at about 06.40 a.m. Around 07.00 a.m., her uterus membrane ruptured and the amniotic fluid allegedly drained out. She was examined at 10.55 a.m. in the labour room by Dr. Naik and on the latter ''s prescription she was given injection Contramal. This, according to the complainant, was a deviation from the standard line of treatment because injection Oxytocin (instead of injection Contramal) should have been administered. Dr. Naik allegedly informed the complainant at about 02.00 p.m. that the entire amniotic fluid had drained out and the foetus ''s position had turned over and, therefore, it would be difficult to perform normal

delivery. Despite this, Dr. Naik did not perform any surgery; instead she asked a fat nurse to sit on the complainant ''s abdomen so as to push the baby out. This caused severe pain to the complainant. Thereafter, Dr. Naik inserted her hand inside the uterus and pulled the baby (a male) out. On delivery, the baby did not cry. Dr. Rajnish Neema, Paediatrician was called in who examined the infant. The child was given artificial respiration but continued to have breathing problem. Hence, it was later taken to Ayushman Hospital, which had the facility of ventilator. At Ayushman Hospital, Dr. Mukesh Khare treated the baby who had developed cyanosis. The complainant alleged that according to Dr. Khare, cyanosis was due either to rupture of respiratory tube of the baby or abnormal functioning of the respiratory centre of his brain due to cerebral oedema which was the result of undue physical pressure exerted at the time of delivery. An ultrasonography was done which found ''mild cerebral parenchymal oedema ''. Dr. R. S. Sharma, Cardiologist at Ayushman Hospital allegedly informed the complainant and her husband that though the child ''s heart was fine, he could not breathe due to the injury suffered during the delivery. The baby finally died at Ayushman Hospital on 08.04.2002. This led the complainant to file a consumer complaint before the District Forum (as well as a police complaint) alleging medical negligence and seeking Rs.19.46 lakh towards compensation and other claims. The respondent/opposite party denied each of the allegations and filed supporting medical literature. The doctors concerned were examined and cross-examined before the District Forum. On consideration of the pleadings, evidence and documents brought on record, the District Forum returned the finding of medical negligence on the part of the respondent doctor and awarded to the complainant a compensation of Rs.1 lakh and Rs.1000/- towards cost. Both the parties appealed to the State Commission against this order, with the result noticed above. At the stage of admission hearing and with the concurrence of the petitioner, the entire medical record relating to the birth of the child after complainant ''s admission to Naik Nursing Home till his death at Ayushman Hospital were referred to the All India Institute of Medical Sciences (AIIMS), New Delhi with the request to constitute an appropriate Medical Board of senior experts in the relevant fields to opine on the allegation that administration of injection Contramal 100 to the complainant was the main reason why the baby developed asphyxia and subsequent respiratory and cardiac problems. On receipt of the report dated 10.06.2011 from the AIIMS, a copy was made available to the petitioner ''s husband (and her authorised representative) for submitting his reply. On the next date, i.e., 26.09.2011 the petitioner ''s husband did not remain present but on 19.09.2011 he had filed his reply to the report of the expert Medical Board with additional documents and requested to decide the case on merits on the basis of the records already submitted as well as the submissions dated 19.09.2011.

3. IT is appropriate at this stage to reproduce the opinion of the Medical Board: "Mrs. Radhika Nigam was admitted in Naik Nursing Home at 06.30 a.m. on 27.03.2002, with labour pain and slight vaginal discharge. On admission her

general condition was good, blood pressure was 130/80 mm of Hg. On abdominal examination the uterus was full term in size. At 09.00 a.m. on 27th March 2002 uterine contractions were noted. Foetus was in vertex position; head was engaged. Foetal heart rate was 140 beats per minute. Cervix was 4 cm dilated, which indicated that patient, was in active labour. "At 10.15 a.m. on 27.03.2002, the patient was prescribed Contramal (Tramadol) injection. The strength of Tramadol injection is not available in prescription slip of receipt. The dose of Tramadol injection is not available in prescription but the receipt shows that one ampoule was sold. Two strengths of Contramal (Tramadol) are available that is 50 and 100 mg/ampoule. "Tramadol is a week opioid analgesic with relatively better safety margins as compared to other drugs like morphine and Pethidine (1,2). As far as its uses in pregnancy and labour are concerned the following extracts from standard reference sources are reproduced. The literature is attached as appendix. "When given before or during birth, Contramal does not affect uterine contractibility. In neonates it may include changes in respiratory rate which is usually not clinically relevant. "As per product information brochure and prescribing information of Tramadol manufacturer, Ultram (Tramadol) should not be used in pregnant women prior to or during labour unless the potential benefits outweigh the risks. Safe use in pregnancy has not been established. Chronic use during pregnancy may lead to physical dependence and postpartum withdrawal symptoms in the new born. Tramadol has been shown to cross the placenta. "As per standard reference textbook of pharmacology "Goodman Gilman " it has been stated that Tramadol has less respiratory depression than other drugs like Pethidine. "There have been several studies that show the use of Tramadol in labour as obstetric analgesic. Parenteral opioid provide some relief from pain in labour but are associated with adverse effects. Maternal satisfaction with opioid analgesia was largely unreported but appeared moderate at best. "The above literature indicates that use of Tramadol in this case was not incorrect. It is unlikely that Tramadol in the dose used (even up to dose of 100 mg) for the pregnant lady in this case can lead to respiratory depression to the extent of neonatal asphyxia which was the situation in this case. There was no apparent predisposing factor in this case. The cause of birth asphyxia cannot be ascertained in absence of detailed clinical information at the time of delivery ".

4. THE written submissions filed by the petitioner ''s husband on 19.09.2011 essentially repeat his contention that administration of injection Contramal was not the standard medical practice and that was the major cause of the baby ''s breathing problem due to which he died at Ayushman Hospital. Along with the written submissions he has furnished copies of medical literature which he had also produced before the District Forum . (i) According to the detailed opinion of the expert Medical Board of the AIIMS, the prevalent medical opinion is that the changes in a neonate ''s respiratory rate due to injection Contramal would not be clinically relevant. The medical opinion also states that in the absence of details it was not possible in this case to ascertain the cause of birth asphyxia of the child. (ii) From its analysis of the medical literature produced before it, the State

Commission has clearly observed that the use of injection Contramal (Tramdaol) was quite prevalent as an analgesic for labour pain relief in 2002 when it was administered to the complainant. The State Commission has further observed that the complainant ''s contention that injection Oxytocin should have been administered instead of Tramadol was baseless because unlike Tramadol (an analgesic), Oxytocin is for inducing labour and it was not necessary in this case as the complainant had developed labour pains on her own. The State Commission has also dealt at length with the other allegations that the amniotic fluid had drained out completely and that the baby ''s asphyxia was on account of the rough handling of the complainant and the baby at the time of delivery. There is no reason to disagree with the State Commission ''s conclusion that the allegation relating to draining of amniotic fluid was not based on the medical record. As regards the cause of birth asphyxia, the State Commission has analysed the evidence tendered by the Paediatrician at Naik Nursing Home as well as the two doctors, a Cardiologist and a Paediatrician who attended on the baby at Ayushman Hospital and come to the conclusion that there was no reason to discard their provisional diagnosis with regard to the cause of child ''s birth asphyxia.

5. THE law on medical negligence in India has been well settled by a catena judgment of the Apex Court. In respect of the case on hand, it is particularly relevant to reproduce what was quoted with approval in paragraph 23 of the Apex Court ''s judgment in the case of Jacob Mathew v State of Punjab and Another [(2005) 6 SCC 1]: "The decision of the House of Lords in Maynard v West Midlands Regional Health Authority by a Bench consisting of five Law Lords has been accepted as having settled the law on the point by holding that it is not enough to show that there is a body of competent professional opinion which considers that the decision of the defendant professional was a wrong decision, if there also exists a body of professional opinion, equally competent, which supports the decision as reasonable in the circumstances. It is not enough to show that subsequent events shows that the operation need never have been performed, if at the time the decision to operate was taken, it was reasonable, in the sense that a responsible body of medical opinion would have accepted it as proper. Lord Scarman who recorded the leading speech with which the other four Lords agreed quoted (at ALL ER p.638f) the following words of Lord President (Clyde) in Hunter v. Hanley, observing that the words cannot be bettered: "In the realm of diagnosis and treatment there is amply scope for genuine difference of opinion and one man clearly is not negligent merely because his conclusion differs from that of other professional men .... The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care. " Lord Scarman added: (All ER p.638g-h) "A doctor who professes to exercises a special skill must exercise the ordinary skill of his speciality. Differences of opinion and practice exist, and will always exist, in the medical as in other professions. There is seldom any one answer exclusive of

all others to problems of professional judgment. A court may prefer one body of opinion to the other, but that is no basis for a conclusion of negligence. " His Lordship further added that: (All ER p.639d) "[A] judge ''s ''preference '' for one body of distinguished professional opinion to another also professionally distinguished is not sufficient to establish negligence in a practitioner whose actions have received the seal of approval of those whose opinions, truthfully expressed, honestly held, as were not preferred. "

6. (i) In this case, according to one set of medical literature Tramadol should not be used for "Pregnant women Prior to or during labour unless the Potential benefits outweigh the risks. Safe use in Pregnancy has not been established. Chronic use during Pregnancy may lead to Physical dePendence and PostPartum withdrawal symPtoms in the new born. Tramadol has been shown to cross the Placenta ". (ii) However, based on extensive literature survey, the Medical Board of the AIIMS has finally oPined as under: "The above literature indicates that use of Tramadol in this case was not incorrect. It is unlikely that Tramadol in the dose used (even uP to dose of 100 mg) for the Pregnant lady in this case can lead to resPiratory dePression to the extent of neonatal asPhyxia which was the situation in this case. There was no aPParent PredisPosing factor in this case ". (iii) Thus, in view of the Position summarised above, it is not legally Permissible to hold the resPondent doctor in this case guilty of medical negligence (deficiency in service) merely because there is one set of medical literature not recommending use of Tramadol/Contramal injection for labour Pain relief since there is another body of Professional medical oPinion holding that administration of this analgesic is unlikely to have caused resPiratory distress in the neonate leading to birth asPhyxia as in this case.

Therefore, desPite deeP symPathises to the comPlainant and her husband for their loss, I do not find sufficient reason to interfere with the imPugned order of the State Commission under the Provisions of section 21(b) of the Consumer Protection Act, 1986. The revision Petition is accordingly dismissed.

