
(1992) 12 NCDRC CK 0093

In the National Consumer Disputes Redressal Commission

RAJ ARORA

APPELLANT

Vs

RUSOMA LABORATORIES (P) LTD.

RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:

Citation : 1993 1 CPJ 166

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Complaint dismissed

Judgement

1. WHETHER the death of Shri S.D. Arora was caused by the administering of a Dextrose Injection (Glucose drips)? If so, whether the said injection was defective and sub-standard? These are the two threshold crucial questions in this complaint. The facts may be noticed with relative brevity and pointed reference to these issues.

2. THE complainant Smt. Raj Arora is the unfortunate widow of late Shri S.L. Arora, the then Additional District & Sessions Judge at Sonapat. On or around the 10th of August, 1990, the said Shri S.D. Arora (hereinafter referred to as the deceased) had fallen ill and was under the treatment of Dr. M.L. Taneja of the Pooja Clinic. On the 15th of August, 1990 at about 12.00 (noon) the said doctor came to the house of the deceased and apparently finding him in a somewhat weak condition, he administered Glucose drips to him at his residence of the Dextrose brand manufactured by Rusoma Laboratories, (Opposite Party No. 1) which he had allegedly purchased from M/s. Satija Medical Store, Gohana, opposite party No. 5 and so evidenced by letter dated the 17th of August, 1990 Annexure C.1. It is alleged in the complaint that the said Glucose drips were fake and spurious and instead of giving any relief to the deceased it worsened his condition necessitating his removal to the General Hospital, Sonapat at about 3.30 p.m. on that very day. Despite diligent attention by the hospital authorities Shri S.D. Arora expired at about 2.40 a.m. on the night between the 15th and 16th of August, 1990. A copy of the medical report of the cause of death issued by the Medical College, Rohtak is Annexure C. 3. THE specific case then was that

the spurious Dextrose Injection IP 10% WV which caused the sudden and untimely death of Shri Arora was batch No. 900798 and was manufactured by opposite party No. 1 as per the label fixed on the bottle containing the said medicine. The complainant much later on the 7th of September, 1990 lodged a First Information Report with Police Station primarily accusing Dr. M.L. Taneja and the Director of opposite party No. 1 and opposite party No. 5 for having caused the death of the deceased. This F.I.R. was however, later quashed by the Hon"ble High Court qua opposite party Nos. 2 to 4 by two orders Annexures C.4 & C.5 with liberty to the respondent-State to take proceedings under the Drugs & Cosmetics Act if it found sufficient material therefor. It is the case that the analysis reports Annexures C.6 to C.8 of Government Analyst Haryana at Chandigarh with regard to the unused part of the aforesaid Dextrose injection which was administered to Shri Arora and also two other sample bottles of Dextrose injections reveal that all were spurious, fake and sub-standard and did not pass the test of sterility and contain particles of foreign matter. It is consequently the claim that the Glucose Drips administered to the deceased was defective and spurious and far below the quality, potency and standard which the opposite party No. 1 was required to maintain under the law. It is then alleged that being guilty of having manufactured spurious medicines or sold and distributed them, the opposite parties No. 1 to 5 are liable to be proceeded against for unfair trade practice. A compensation to the tune of Rs. 9 lacs is hence claimed against them. Basic reliance was placed on documents C.1 to C.9 attached to the complaint.

In the written statement filed on behalf of opposite party Nos. 1 and 3 preliminary objections are raised and reliance in fact is placed on the First Information Report lodged by the complainant which indicated that the primal liability was levelled against Dr. M.L. Taneja for his negligence in administering the drips at the residence and not having remained by the side of the deceased during the time when the same was administered to ascertain the action or reaction thereto. The batch number of the Dextrose injection is then sought to be put in doubt and it is pointed out that there is no evidence whatsoever that either the death of the deceased was due at all to the Glucose injection or whether the same was fake or spurious. Reliance is placed on the High Court judgment quashing the First Information Report apparently on the ground that no offence was disclosed therein against the opposite parties. On merits, in the parawise reply the allegations in the complaint are either strongly controverted or denied for want of knowledge. It is highlighted that there is a head on contradiction about the alleged batch number of the Glucose drips administered to the deceased. It is also pointed out that the Government Analyst himself opined that because the samples sent were unsealed, no definite opinion could be given with regard thereto. It is the case that the complainant has deliberately attempted to suppress the contents of the First Information Report because it reveals the falsity of the pleas raised in the complaint. All liability on behalf of the said opposite parties is consequently denied and reliance is placed on a copy of

the First Information Report lodged by the complainant herself.

3. IN the written statement of opposite party No. 5, the allegations in the complaint are controverted and the firm plea taken is that Dr. M.L. Taneja vide Annexure C.I dated the 17th of August, 1990 has expressly mentioned batch number 1032 against bill No. 6030 dated the 4th of August, 1990 and it is the case that the opposite party had not sold any Dextrose injection of this batch number against this bill. It is pointed out that Dr. M.L. Taneja has since expired and it would appear that the local Police has managed to get some documents including Annexure C.1 from him. It is also the case that opposite party number 1 being merely a trader in the goods manufactured by licensed Pharmaceutical Company is in no way responsible for the quality and genuineness thereof. It is the case that the samples sent to the Government Analyst Chandigarh were both belated and unsealed and consequently no meaningful opinion could be given nor any reliance could be placed thereon. In support of her case, the complainant put in her own affidavit and certain additional documents to which a detailed reference is unnecessary. She was cross-examined at some length and admitted that she had lodged the First Information Report on the 7th of September, 1990 and the same was correctly recorded according to her instructions. She further stated that she could not say whether Dr. Taneja was a well-known or highly reputed doctor and in fact he had insisted to administer Glucose drips to the deceased even though the patient and his family were not in favour thereof. She stated that she did not notice any foreign element or dead ants in the Glucose bottle and then stated that she had made a complaint later after the F.I.R. because the batch number had been wrongly recorded.

4. IN rebuttal, the affidavit of Shri Krishan Lal, Proprietor Satija Medical Store was placed on the record along with supporting documents as also of Shri M.K. Srivastava being the Senior Executive with opposite party No. 1 Rusoma Laboratories Pvt. Limited. Both the aforesaid deponents were cross-examined on behalf of the complainant without eliciting anything meaningful in her favour. On behalf of the opposite parties it was forcefully and frontally argued that the very foundation of the charge of negligence or causing the death of the deceased by the administering of the glucose drips is altogether missing. It is pointed out that there is not a tittle of evidence to even indicate that the direct and proximate cause of the death of the deceased was due to the glucose drips. The basic submission was that even the whole case and the testimony of the complainant earlier was a clear pointer that if at all the death was caused by the negligence or inefficiency of Dr. M.L. Taneja who was attending upon him and who has since expired. There is obvious merit in the stand and the submissions aforesaid. It is somewhat elementary that in order to succeed the complainant herein has to first establish that the direct cause of the death of the deceased was the administering of the Dextrose injection. Barring her own bald assertion in the complaint and the somewhat self-serving affidavit in support thereof there is nothing else to establish that the death of the deceased was in fact occasioned by the Glucose drips. Indeed all the other circumstantial or direct testimony is to

the contrary.

5. NOW it is the complainant's own case that the deceased had fallen ill five or six days before his death on the 16th of August, 1990 and remained considerably unwell during this period. His then Medical attendant Dr. M.L. Taneja apparently found him in a very weak and deteriorated physical condition which according to him, rightly or wrongly required the administering of Glucose drips. He seems to have done so against the wishes of the family and it was the complainant's own case that he was negligent in administering these drips at the residence of the deceased where the action or re-action of these drips along with other medicines and the physical condition of the patient could not be under the watchful eye of any medical attendant. The complainant had herself made a serious grievance of this fact and in the First Information Report primarily laid the blame at the door of Dr. M.L. Taneja who was named as one of the accused. There is then no meaningful evidence that the deterioration in the condition of the deceased at his residence was due to Glucose drips and it is the complainant's own case that she removed the drips forthwith in order to remove the deceased to General Hospital at about 3.30 p.m. on the 15th. Therefore, the duration for which the drips were administered to the deceased is wholly unclear. The medical authorities of the General Hospital first attended to the deceased and there is not the least bit of any evidence, or opinion, that they found the set-back in the condition of the deceased as having been occasioned directly by the Glucose drips. Similarly he was later shifted to the Medical College Hospital, Rohtak at 9.05 p.m. and there is no opinion of any one of the authorities there that the cause of the death of Shri Arora who expired at 2.40 a.m. on the 16th of August, 1990 was the administration of any Dextrose injection. Indeed, the complainant's own document Annexure C.2 pertaining to his admission in the General Hospital at Rohtak would indicate that the medical diagnosis was that of a pyrexia of unknown origin with a vague innuendo that it might be drug induced gastritis. He remained in the hospital from 3.30 p.m. to 8.20 p.m. and the treatment administered and the opinion of the medical attendant give not the least indication that his malady was the direct and proximate because of Glucose drips. What is even of greater significance is the complainant's own document Annexure C.3, the medical certificate of the cause of death at the Rohtak Medical College & Hospital. This in express terms gives the cause as an irreversible shock. There is not the least indication therefore in this document either that the unfortunate demise of Shri S.D. Arora was directly occasioned by a Dextrose glucose drip.

6. IN the aforesaid context of a total absence of any ante-mortem opinion about the proximate cause, it has been rightly argued that there is equally an absence of any post-mortem opinion for the same. It has been rightly pointed out on behalf of the opposite party that no autopsy was done on the body of the deceased and apparently the death was not attributed to any criminal negligence. IN any case, the real cause of death could have been established only if a post-mortem examination had been done and any other test if

necessary on the relevant portion of the body had been undertaken. IN the context of the absence of the autopsy no conclusive opinion is thus available of the direct and proximate cause of the demise of Shri S.D. Arora. Lastly, in this context is the significant fact that the Hon''ble High Court of Punjab & Haryana had quashed the First Information Report at the threshold finding not the least hint of any offence under Section 304-A or 420,1.P .C. levelled against some of the opposite parties in this very context.

In the light of the above, the inevitable conclusion with regard to the basic question posed at the very outset is that the complainant has wholly failed to establish that the death of Shri S.D. Arora was solely caused by the administering of a Glucose drip of Dextrose brand.

7. ONCE it is held as above, it is somewhat manifest that the case of the complainant is near fatally damaged. However, assuming even the highest in her favour, there is yet a total absence of any link that the specific Dextrose injection administered to the deceased by Dr. M.L. Taneja was of the particular batch number as alleged or that the same was either manufactured by opposite party No. 1 or distributed and sold by opposite party No. 5. Herein, it is the complainant''s own case that only one bottle of 540 Mls. of Glucose drips was sought to be administered to the deceased and even this was also stopped after a short duration without even indicating the extent or quantity of drip having been received by the deceased. On the complainant''s own showing Dr. M.L. Taneja who allegedly had purchased the said bottle from opposite party No. 5 in his own communication Annexure C.1 mentioned the sample as Dextrose injection IP 10%, batch number 1032 manufactured by M/s. Rusoma Laboratories Pvt. Limited, Indore. This according to him had been purchased from M/s. Satija Medical Store vide bill No. 6030, dated the 14th of August, 1990. However, a head-on and inexplicable contradiction in this regard is the fact that the complainant''s own case in para 5 Clause (iv) is that the spurious Dextrose injection which was administered to the deceased and which caused sudden and untimely death was batch number 900798 manufactured by Rusoma Laboratory Pvt. Ltd., Indore. Therefore, the bottom of the complaint is virtually knocked out by the fatal contradiction in the alleged batch number which is said to have been administered to the deceased.

8. EVEN as regards the complainant''s present case and with regard to batch number 900798 her primal evidence with regard thereto vide Annexure C.6 being the report of the Government Analyst, Haryana dated the 25th of October, 1990 gives the lie direct to her case. This would indicate that it was nearly two months and seven days After the alleged administering, that the Glucose drips were sent to the Laboratory for analyses. This would show that nearly 3.15 Mlts. of this solution was still in the sample and the opinion therefor was in the following terms: - "The sample referred to above was received in an unsealed and partially used condition fitted with infusion set. It contains 8.06% w/v Dextrose & which is less than the prescribed I.P. limits."

(2) contains Vitamin B1, Vitamin B2, Vitamin B6 and Niacinamide; (3) It contains some dead Ants; (4) It contains lot of white, flocculent mass; (5) However regarding the reaction no definite opinion can be given as the sample was un-sealed when received."

It is somewhat plain from the above that an analysis after more than two months on an unsealed sample with no evidence of when it was taken and kept in whose custody and in what condition would completely shatter the complainant's attempt to prove that even batch number 900798 was fake and spurious or substandard. Yet again the complainant's reliance on Annexure C.8 which pertains to an altogether different batch number 901082, apparently taken into possession by the Police subsequently has little or no relevance to the case. All this has to be viewed in the context of the firm stand taken by the opposite party No. 1 that he had never sold any injection of the alleged batch number to Dr. Taneja at all. Reliance has been rightly placed on the document O.2 which is the relevant cash memo. Equally significant is the statement of Smt. Raj Arora in her cross-examination that the deceased was suffering from viral fever five days earlier from the time of his death and was in a weak condition of health. She was doubtful about the medical competence of Dr. Taneja and conceded that she had correctly lodged the F.I.R. somewhat blatedly on the 17th of September, 1990, which lays the blame squarely on the doctor aforesaid. She even conceded that she did not notice any foreign element or any dead ants in the Glucose bottle which was administered to her husband. She however, conceded that the F.I.R. which she had lodged had been quashed by the Hon"ble High Court.

9. IN the light of the above it has to be inevitably concluded in the alternative that there is no proof that the specific Dextrose injection of Glucose drips administered to the deceased was actually defective or sub-standard at the material time.

10. ONCE the aforesaid twin findings have been arrived at it is manifest that the complaint cannot possibly succeed. The unfortunate complainant is faced with an unsurpassable hurdle of a total lack of evidence on the issues which are crucial and form the core of the matter. Though one may have considerable sympathy with the unfortunate widow, the present case has to be necessarily dismissed. We would however, not wish to burden the consumer-complainant with any costs despite the somewhat protracted proceedings herein. Complaint dismissed.