(2015) 09 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Case No : 413 of 2010

RAJ HOSPITAL & RESEARCH CENTRE & ANR — APPELLANT

Vs

MAHESH PRASAD VARMA & ANR. — RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : 2015 39 RCR(Civ) 136 : 2015 4 CPR 306 : 2016 2 CPJ 183 : 2016 3 ALD 17 : 2017 2 AllMR 72

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : K. G. Sharma, S. K. Roy, Manish Kr., Maibam N. Singh

Judgement

1. The brief facts relevant to dispose of this appeal are that the complainant, Mahesh Prasad Verma''s wife Karuna (since deceased, referred hereinafter as a " patient") visited Raj Hospital & Research Centre, Ranchi, opposite party No.1 (in short Raj Hospital) on 23-01-2008. The patient had pain in upper limbs. The opposite party No.2, Dr. Binay Kumar examined her and advised for removal of Lipoma on her neck. She has informed the opposite party No.2 that she was a known case of Epilepsy and chronic bronchial asthma. However, the opposite party No.2 assured the patient that there was nothing to worry if she undergoes surgery for removal of Lipoma. On 25-01-2008, the opposite party No.2 along with Dr. Vijay Raj, a Neurosurgeon, examined her. Dr. Vijay Raj advised to use the collar guard for relieving pain in the neck due to cervical bone thinness and not due to Lipoma. In the afternoon, the opposite party No.2 informed the patient about conducting the surgery on 26-01-2008 at 10:00 A.M. On the said day, as the patient had taken tea and water in the morning, Dr. A. Sinha, the Anaesthetist, refused to administer anaesthesia. However, Dr. Binay Kumar insisted for operation, in the afternoon, hence on 26.1.2008, after consent, the patient was taken for operation, at 3.00 p.m. Thereafter, at 4.00 p.m., the complainant witnessed commotion in the operation theatre and saw doctors rushing inside the room. The patient went into coma. The complainant came to know that Dr. A K Sinha was not present in the operation theatre (OT) ; anesthesia was given by one of the staff of the OT on the direction of OP 2. The

patient was put on ventilator and shifted to ICU, subsequently, patient developed Hypoxic Enceplopathy and coma. Thereafter, patient was shifted to Apollo Hospital for further treatment. Therefore, alleging gross negligence on the part of OP, the complainant filed a complaint before the State Commission, Ranchi, against the OPs.

2. The State Commission partly allowed the complaint and directed the OP 1 and 2 to pay Rs.4,40,000/- and Rs.10,000/- as costs of litigation. Hence, against the order of State Commission, Ranchi, first appeal was filed by the OP.

3. We have heard learned counsel for both the parties. Learned counsel for the appellants/OPs submitted that, the said excision of Lipoma was not advised by OP doctors, but the decision was taken due to persistent request by patient for cosmetic reasons. The operation was done by OP-2, a qualified surgeon, with due care, after informed consent. Anesthesia was administered, after proper pre-anesthetic checkup of the patient. Anaesthesia was given by Dr. A. K. Singh, the Anesthetist, at 3.00 p.m. and operation was completed, within 15 minutes. However, she developed bronchospasm for which, she was given standard treatment. It was also stated that the patient developed Hypoxic Encephalopathy, since the patient had Status Epilepticus and asthmatic, for which Dr. Prasen Ranjan, a Neurologist, was consulted. The patient was referred to Apollo Hospital on 20.1.2008, with written consent of complainant''s husband, however, the patient expired, on 8.8.2008. The counsel also submitted that the expert opinion of Dr. V. K. Srivastava was wrongly considered by the State Commission.

4. Learned counsel for the complainant submitted that OPs performed the operation without consent, there was no need for removal of lipoma. He brought our attention towards the MRI report, which revealed cervical disc problem.

5. The main question swirls around that, "whether, the excision of lipoma was so essential?" The medical record revealed that the patient was admitted on 24.01.08, for pain in upper limb. The patient was investigated by MRI of cervical spine at EKAO Image Institute on 24-01-2008. It was revealed that there was "diffuse protrusion of C2/C3 to C6/C7 intervertebral disc with disc osteophyte complex causing compression of Neural foramina and leading to spinal stenosis. Also there was degenerative changes" Therefore, Dr. Vijay Raj, Neurologist, diagnosed the case as spondylosis of neck with radiculopathy. Thus, as per Dr.V.Raj''s opinion, the problem of pain had no connection with Lipoma.

6. In our view, it was duty of the OP-2, who should have taken the decision in the interest of patient, as she was an old lady above 65 years, with various health conditions, like suffering from neuralgia, chronic bronchial asthma, hypertension etc. Therefore, we do not accept the OPs contention that, the excision of lipoma was decided on the demand of complainant''s wife. It is surprising to note that medical record did not show the clinical details of lipoma viz. its size, consistency, etc. It is further surprising to note that though it was not an emergency, even then the operation took place on a holiday i.e. on 26 th

January, 2008.

7. The allegation of complainant is that anesthesia was given by a staff member in OT and not given by Anesthetist, Dr. A.Sinha. In this context, there was neither denial or any affidavit in support of OPs, filed by Dr. A. Sinha Also, Dr. Binoy Kumar (OP-2), has not filed any specific reply on affidavit to assert that, the patient was free from all symptoms of bronchospasm and fit for this operation.

8. We are of the opinion that Lipoma is a benign growth of tissue. As there was no danger or threat to the life of the patient, therefore, the operation was not urgency, yet, it was performed on 26.01.2008. The doctors are not under any obligation to abide by the wishes of the patients nor are above a standard of practice. A doctor should not administer or advise a treatment, which is harmful for the patient. It is very important to consider, whether, general anaesthesia was safe in the instant case. The patient was asthmaticsuffering from COPD of intrinsic nature and the anaesthesia will develop respiratory problems. We are unable to locate the informed consent. It is well known that the complications are more with the patients of asthma, if given general anaesthesia. Even the expert, Dr. V.K. Srivastava opined that asthma patients are likely to suffer bronchospasm, with general anaesthesia. Therefore, the explanation given by the OP-doctors, appears to be an afterthought.

9. A catena of judgments from Hon''ble Supreme Court and this Commission discussed medical negligenc. In the case of Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole & Anr. (1969) AIR (SC) 128, it was held that: The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those, duties gives a right of action for negligence to, the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law require: (cf. Halsbury''s Laws of England 3rd ed. vol. 26 p. 17).

1. The Hon''ble Supreme Court in Jacob Mathew''s case elaborating on the degree of skill and care required of a medical practitioner quoted Halsbury''s Laws of England (4 th Edn., Vol.30, para35), as follows:

"35. The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge

would have prescribed different treatment or operation in a different way;.."

1. After considering the entirety, we are of the considered view that OPs failed to take a reasonable care in the instant case. , hence held liable for negligence. Therefore, we dismiss the first appeal. The parties are directed to bear their own costs.

