(1999) 06 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

RAJKUWARBAI — APPELLANT

Vs

R.R. DHOOT, MEDICAL PRACTITIONER, DHOOT HOSPITAL, AHEMADNAGAR — RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Citation : 1999 2 CLT 610 : 1999 2 CPJ 682 : 1999 3 CPR 2

Hon'ble Judges : A.A.Halbe , G.R.Bedge J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal by the original complainant is directed against the order of dismissal of Complaint No. 503/93 by the District Forum, Ahemadnagar. The main claim was regarding the compensation arising out of the negligence on the part of the opposite party Dr. Dhoot in the treatment of one Rameshwar @ Ambar, aged 50 years. Rameshwar was an indoor patient and that he developed gangrene in the left foot second toe which was not properly treated and attended to by the opposite party. Rameshwar was in the Hospital of the opposite party from 23.6.1992 to 29.6.1992. Deceased should have been attended for unhealing wound in the left second toe which brought about the growth of gangrene which ultimately necessitated the amputation of left leg below the knee. The negligence culminated in the patient going in coma and Rameshwar ultimately died on 27.8.1992 at 7.00 a.m. The notices were exchanged between the parties and since Dr. Dhoot declined the request of the complainants to pay the compensation of Rs. 1,50,000/-, the complaint came to be filed.

2. THE District Forum on fair assessment came to the conclusion that no negligence was established on the part of Dr. Dhoot who took assistance of various specialists in the treatment of diabetes and gangrene and that the complainant did not obey the instructions of the Doctors acting on behalf of the opposite party and postponed the urgent operation of gangrene and in the result, the operation had to be effected on the knee portion of the left leg of the deceased. It is also pointed out that the deceased was shifted to Pune on

29.6.1992 where he was treated till 5.8.1992 and this is the period which could establish that the treatment by the opposite party was not incorrect. THE District Forum felt that these facts were supported by the affidavit of opposite party. THE affidavits of Dr. Kekade, Dr. Jhalani and Dr. Bhandari and the clinical notes recorded by Dr. Dhoot and the clinical notes of the K.E.M. Hospital did not establish any negligence on the part of the opposite party. In that light, the District Forum dismissed the complaint. THE main allegation on the part of the complainant is that the patient was diagnosed for diabetes as early as from 11.6.1992 and that . the Certificates of Dr. Dhoot''s Hospital clearly establish this. THE clinical report shows that the white cells rose to abnormal level on 24.6.1992 which further rose on 26.6.1992. THEse symptoms should have prompted Dr. Dhoot to take notice of the emergent treatment of Rameshwar. It is also contended that when the patient was admitted for unhealing injury in the second toe of the left leg, it was the bounden duty of Dr. Dhoot to have treated the patient for gangrene as well. Postponement thereof brought about the major amputation below the left knee of the deceased. THE contradictions have been pointed out in the notice and the pleadings and it is, therefore, contended that the negligence was per se established in the treatment of Dr. Dhoot. Dr. Kekade was summoned on 26.6.1992 for the first time and Dr. Kekade directed the urgent operation of the site of gangrene in the left foot and left leg. Since the complainant failed to take decision in the treatment of the deceased, by way of abundant precaution, they removed the patient to the K.E.M. Hospital where the operation was performed on 29.6.1992. THE. gangrene had developed to such an extent that the operation had to be effected immediately. We find that in the case papers of K.E.M. Hospital, the patient improved substantially in the initial part of the treatment. But the condition went on declining. He was in the Hospital till 5.8.1992 and where after it seems that he was taken to Sangamner and died on 27.8.1992. The period of treatment in the Hospital of Dr. Dhoot and in the K.E.M. Hospital does not seem to be in dispute.

We shall have to examine as to whether there was delay on the part of Dr. Dhoot or his associates in the treatment of Rameshwar in that regard, the papers clearly disclose that the patient was diagnosed for diabetes. He was admitted to the Hospital. He was in pretty serious condition. But it seems that with the efforts of Dr. Dhoot and his associates, the revival could be secured on the next day. Regarding the fact of injury to the second left toe, the injury was noticed and it can be seen from the case papers of Dr. Dhoot''s Hospital that the patient was treated for diabetes and that his injury was also duly treated. Now, in this regard, Dr. Dhoot has produced the medical literature from Harrison''s Text Book of Medicine in regard to diabetic foot ulcers and it is clearly observed by the Author that no specific therapy is available for diabetic ulcers, supportive treatment often can lead to salvation of the leg without amputation. One approach is simply to put the patient to bed using hydrotherapy and debridement to remove non-viable tissue. Other is casting the leg with plaster to redistribute weight bearing and protect the lesion. Pending culture, initial antibiotic therapy

for infected ulcers without systematic signs might be cefoxitin or ampicillin sulbactam. If signs of sepsis are present, ampicillin sulbactam plus gentamicin or aztreonam may be prescribed. Treatment is supportive with bed rest, elevation of the foot, soaks, debridement and in some cases antibiotics. Protective plaster casts are sometimes advised. If these therapies fail and gangrene develops, amputation is the only recourse. The learned Counsel for the opposite party in his written statement has pointed out that the remedy for foot ulcer is bed rest, antibiotics, debridement of the wound, amputation, control of blood sugar. Rameshwar was given complete bed rest between 23.6.1992 and 29.6.1992. He was given injection Ampicillin at the time of admission, injection Gentamycin on 24.6.1992, and injection Ciplox on 26.6.1992 as suggested by Dr. Kekade and this should establish that the Doctors adopted the established practice of treatment. This is the antibiotic combination, an effective combination as ampicillin + gentamycin with a view to achieve an additive or synergistic effect against a single organism when the infection is severe, the body defence is poor. Ampicillin can be used alongwith gentamycin to meet such emergency. In the affidavit of Dr. Kekade and Dr. Bhandari, we find that Dr. Dhoot had taken these. precautions. The injury was treatment during the period of hospitalisation. It cannot be lost sight of the fact that the pathological reports show that the blood sugar was within the control range. The blood sugar was kept under control around 200 gm. Now, so far as the gas gangrene is concerned, it can be gathered from the affidavit of Dr. Kekade that when he examined the patient on 26.6.1992, he found that there was small infected and ulcerated wound on left 2nd toe which sloughs at the base of the wound pus discharge, colour and temp. of foot were normal, Dorsalis pedis pulsation was also normal and, therefore, he prescribed the treatment of local debridement of wound, which was done with Eusol dressing, done. He recommended change of antibiotics with proper follow-up, daily dressing with Eusol and rest. He again examined the patient on 28.6.1992 at about 9.45 a.m. and noticed that there was blackish Discoloration of left foot, left Dorsalis pedis pulsation weak, left Popital and limited femoral pulsation normal. He identified that this was diabetic gangrene of left second toe with cellulitis of foot. He, therefore, recommended immediate amputation of left leg and advised the relations of the patient for immediate treatment. However, it is to be noticed that the patient was removed to the K.E.M. Hospital on the next day. It is worthwhile at this stage to go through the Medical Literature, which says that the incubation period of gas gangrene is usually short; almost always less than 3 days and frequently less than 24 hours. Typically, gas gangrene begins with the sudden appearance of pain in the region of the wound, which helps to differentiate it from spreading cellulitis. Once established, the pain increases steadily in severity but remains localised to the infected area and only spreads if the infection spreads. Gas usually is not obvious at this early stage and may be completely absent. Now, this would show that gas gangrene suddenly appears and seriously attacks the condition of the patient. The time left for treatment is very short and in this case, it is very clear in the affidavit of Dr. Kekade that the gas gangrene was not noticed on 26.6.1992 but possibly

developed between 26.6.1992 and 28.6.1992. He, therefore, recommended immediate amputation. This approach is in consonance with the Medical Literature of "Harrison''s Textbook of Medicine, 13th Edition, Page 639". This conclusion has negatived the contention of the complainants that un-healing wound was not treated for the purpose of gangrene. It would be futile to say that right from entry of the patient in the Hospital, the treatment for gangrene should have been adopted by the Doctors. The Medical Literature shows that it appears suddenly and in this case, it appears after 26.6.1992. But as soon as it was detected, Doctors took appropriate steps. It was the bounden duty of the complainant to have second medical opinion of expert indicating that different treatment could have retrieved the situation or that the approach and the method followed by Dr. Dhoot was totally erroneous and prejudicial to the health of the patient. Not an iota of evidence on behalf of complainant is on record. His approach is not balanced approach inasmuch as the complainants start with the presumption that there was gangrene and the same should have been treated from the date of admission of the patient to the Hospital. In I (1997) CPJ page 471 in the case of Rameshbhai P. Prajapati & Anr. v. Dr. P.N. Nagpal, the Gujarat State Commission laid down that the law demands that the complainant must prove the complaint by convincing material evidence of negligence of the Doctor. In that case, the same was absent and the complaint was, therefore, dismissed. The same Commission, in the case of Vaghri Gopalbhai Mashabhai v. Parmar Navalben Balabhai & Anr., reported in II (1993) CPJ 1038=1993 (3) C.P.R., Page 1, has laid down that the consumer has to prove two things that he hired the services of opposite party and that the consumer suffered injury due to the negligence of the opposite party. On the other hand, there is a established ratio that a Doctor is not negligent if he has acted in accordance with the practice expected as proper by responsible Doctor skilled in that particular field or subject. We believe that Dr. Dhoot has adequately explained the proper course of treatment he adopted. Dr. Kekade and Dr. Bhandari''s affidavits clearly show that the patient was treated and attended to on every day and that the injury was cleaned every day. It is unfortunate that the gas gangrene suddenly appeared and brought about the amputation of the left portion below the knee. The K.E.M. Hospital''s papers also show that the patient was treated for fairly substantial time, the patient was non-cooperative at times. But all the same, the initial treatment adopted by Dr. Dhoot cannot be faulted and no negligence can be attributed. We, therefore, feel that the District Forum has rightly dismissed the complaint. We confirm that conclusion and, accordingly, pass the following order : ORDER "The appeal is dismissed. The order of the District Forum is confirmed. No order as to cost." Appeal dismissed.

