

(2007) 12 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

RAMESH JAIN

APPELLANT

Vs

Jagroop Singh

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Citation : 2008 1 CPJ 233 : 2008 1 CPR 221

Hon'ble Judges : K.S.Gupta , P.D.Shenoy , S.K.Naik J.

Advocate : Dhruv Mehta , K.B.Hina

Judgement

1. -THIS revision petition has been filed against order dated 25. 10. 2002 passed by Consumer Disputes Redressal Commission Punjab, Chandigarh (hereinafter referred to as the State Commission) in Appeal No. 145/2000 vide which order dated 24. 12. 1999 passed by the District Consumer Disputes Redressal Forum, Ludhiana (hereinafter referred to as the District Forum) in Complaint No. 520/97 dismissing the complaint of the respondents herein has been set aside and the petitioners have been directed to pay a sum of Rs. 4,50,000 to the respondents/complainants as compensation. Brief facts of the case are that Jagroop Singh along with his two minor sons Harjodh Singh and Ramandeep Singh filed the complaint stated above before the District Forum at Ludhiana alleging therein that Dr. Ramesh Jain, petitioner/opposite party was consulted by Jagroop Singh during the first week of June 1997 about his wife Narinder Kaur missing her monthly periods. After check-up, the doctor advised C. T. Scan of Narinder Kaur which was also undertaken in Dr. Jain's Hospital. After examination of the film of the scan, Dr. Jain informed Jagroop Singh, complainant that his wife was 4 months pregnant and advised her to get the pregnancy terminated assuring him that he had all the necessary equipments and facilities to undertake such abortion operations.

2. NARINDER Kaur thereafter was admitted in the hospital on 7. 6. 1997. She was administered glucose injection and other medicines for about 10 days whereafter abortion/dnc operation was undertaken. On 19. 6. 1997, she was informed that the operation was successful and discharged. However, within two

days of the discharge, Narinder Kaur started running high fever and abdominal pain. Dr. Jain on being contacted changed the medicines but of no avail. On request, Dr. Jain visited the patient in the village on 27. 6. 1997 and advised re-admission for a second operation. Patient was admitted on 28. 6. 1997 and an ultrasound scan was undertaken. On 1. 7. 1997 another operation was performed which required four units of blood transfusion. It was admitted by Dr. Jain that a pipe had been cut during the first operation necessitating the second one. Condition of the patient, however, did not improve and all of a sudden on 3. 7. 1997, Dr. Jain advised shifting of the patient to Mohandai Oswal Cancer Treatment and Research Foundation and Hospital (hereinafter referred to as Oswal Hospital), Ludhiana where his brother-in-law Dr. Satish Jain was posted. On the request of the respondent No. 1, Dr. Jain accompanied them to the hospital at Ludhiana. The condition of Narinder Kaur, however, not only did not improve but also further deteriorated resulting in the doctors expressing their inability to handle the case and she was discharged on 5. 7. 1997. Respondent No. 1, thereafter, got the patient admitted in Dayanand Medical College Hospital on 7. 7. 1997 where despite best possible treatment, the patient expired on 15. 7. 1997 due to infection in the body resulting in poison spreading in the body and some vital pipeline having been damaged during the operation as informed by the Dayanand Hospital doctors. Post-mortem of the body of Narinder Kaur was performed on the same day by attending doctors at Civil Hospital, Jagraon. The post-mortem report stated the cause of death to be : "due to septicemia arising from peritonitis as a result of uterine perforation and is sufficient to cause death".

Convinced that his wife died due to medical negligence of Dr. Ramesh Jain while conducting the abortion operation, the respondents approached the District Consumer Forum vide their complaint dated 13. 8. 1997 seeking compensation of Rs. 4,50,000.

3. BEFORE the District Forum, Ludhiana the petitioner No. 1 i. e. Dr. Jain denied that Narinder Kaur was ever admitted in his hospital or was any operation conducted on her. He stated that Narinder Kaur visited him only thrice - first on 7. 6. 1996 with complaint of chest and abdominal pain when after an ultrasound scan she was diagnosed of GB stone and 4 months of pregnancy. No treatment was taken; second visit was on 15. 6. 1997 with complaint of vomiting and diarrhoea and fever and was treated in the OPD. Third visit was for blood test when report was given and certain medicines advised for 2/3 days with instructions to report back which was never done. The District Forum was of the opinion that the evidence adduced by the respondents did not prove that the operation of the deceased was conducted by Dr. Jain and, therefore, dismissed the complaint

4. AGGRIEVED by the dismissal order of their complaint by the District Forum, the respondents preferred appeal before the State Commission who after thoroughly evaluating the evidence produced by either side came to the

conclusion that the petitioner No. 1 is "guilty of negligently performing the operation on Narinder Kaur which ultimately caused her death and is liable to compensate the respondents for his negligent act". It is against this finding and order dated 25. 10. 2002 of the State Commission that the petitioners (Dr. Ramesh Jain and his institution) have filed the revision petition. Mr. Dhruv Mehta, learned Counsel for the petitioners assails the order of the State Commission primarily on the ground of erroneous appraisal of the evidence in particular: annexure A and Exhibit Px - Pages 63-64 of the paper book. Annexure Px1 - Page 158 of the paper book annexure D - (Page 71 of the paper book) Admission Card and Registration slip on Oswal Hospital. Referring to Exhibit Px, he contends that it is merely an Ultrasound Scanning report of upper and lower abdomen dated 7. 6. 1997 as could be seen from the head-note of the OPD slip which has been wrongly held to be "operation notes" by the State Commission. The contents therein are the observations of the petitioner on the ultrasound and by no stretch of imagination could they be said to be "operation notes".

5. THE Counsel further contends that this document has a column titled "opd No. " which means "outdoor Patient Number" which implies that Narinder Kaur was examined as an outdoor patient and was never admitted at the Jain Nursing Home on 7. 6. 1997. The State Commission, thus committed a gross error in holding the exhibit to be "operation Note" and held it to be the proof of the first operation.

6. INSOFAR as Ex. Px1 is concerned, learned Counsel states that the respondent No. 1 around the first week of July 1997 approached the petitioner No. 1 with a medical document and requested him to transcript the illegible contents as it was required in order to admit Narinder Kaur at Dayanand Hospital. It was purely on humanitarian ground that he reproduced the illegible document on a plain piece of paper. This paper was subsequently tampered with by the respondents to give the appearance of document of his hospital. The Counsel further states that since this undated note clearly mentions the names of the doctor who conducted Laparotomy and the doctor who assisted him in giving anaesthesia, the State Commission has gravely erred in holding this note to be the primary evidence of the petitioner's involvement in the operation. The Counsel further contends that there is absolutely nothing in the contents of this document which in any manner shows that Dr. Jain conducted the abortion. Relying on this document, without appreciating the background in which the said petitioner transcribed an illegible document on humanitarian ground, the State Commission has misled itself to believe that it was an operational note of the petitioner's hospital. With regard to the third piece of evidence i. e. Annex. D (P-70) which is the admission card of Oswal Hospital dated 3. 7. 1997, the learned Counsel has stated that the petitioner (Dr. Jain) never accompanied Narinder Kaur to that hospital. He had last seen Narinder Kaur on 20. 6. 1997 when she underwent blood test at his hospital. Even, otherwise, mention of his name in the admission card of Oswal Hospital, according to the learned Counsel means nothing and in no manner substantiates the allegation that the petitioner (Dr. Jain) performed the

Laparotomy operation of Narinder Kaur. Furthermore, the Counsel points out that (P-71) which is the Registration slip clearly mentions that the patient was brought by Jagroop Singh and the column "referred by" has been left "blank". Where then does the question of Dr. Jain accompanying the patient arise, questions the Counsel. Another limb of arguments on the point advanced by the learned Counsel relates to tampering of the document. He points out that Annex. D (P-70) which is the admission card of the Oswal Hospital indicates the name of Dr. Ramesh after some over-writing whereas the same OPD slip produced by the petitioner on (page 59), there is no name of any doctor even though the over-writing appears on that slip as well. According to the learned Counsel, the document on (page 70) has been manipulated to endorse the name of Dr. Ramesh (Jain) by the respondents in order to malign his reputation. The State Commission has failed to appreciate these glaring inconsistencies and discrepancies and clearly gone wrong in holding that Dr. Ramesh Jain brought the patient.

With regard to the reliance of the State Commission on the case summary dated 2. 8. 1997 (P-150) prepared by Dayanand Medical College and Hospital to determine the cause of death, the learned Counsel has contended that this document nowhere mentions that the petitioner Dr. Jain had conducted the abortion operation. Besides while the case summary document states that the patient underwent MTP on 22nd or 23rd June, 1997 at a private hospital at Raikot, the respondents throughout had claimed that the operation was conducted around mid-June 1997. This was yet another glaring inconsistency sufficient to doubt the authenticity of the document which the State Commission has failed to appreciate.

7. INSOFAR as reference to the post-mortem report (P-153) by the State Commission is concerned, the Counsel in similar vein has contended that, while the report merely sets out the cause of death, it does not contain any material to indicate that petitioner Dr. Jain conducted the operation. Concluding the argument, the learned Counsel contends that the respondents belong to the rival political camp and the case against the petitioners has been cooked up out of vengeance. For the failure by the State Commission to appraise the main evidence discussed above, the learned Counsel contends that the revision petition needs to be accepted.

8. EVEN though a number of other pleas have been stated in the revision petition, the learned Counsel has pressed no other point. Counsel for the respondents/complainants Ms. K. B. Hina, on the other hand, has contended that the order of the State Commission is a well reasoned, detailed order passed after a thorough scrutiny and appraisal of the evidence produced by the parties and suffers neither from any illegality or procedural impropriety and does not warrant any interference. Replying to the inconsistencies and discrepancies pointed out by the learned Counsel for the petitioners, Ms. Hina has submitted that the allegation of tampering with Admission Card of Oswal Hospital Annex. D (P-70)

has been raised for the first time before this Commission at the revisional stage which is impermissible as it was never raised before the For a below. The Counsel has objected to the application of the petitioners to file additional evidence at this stage with which we agree and reject the same.

9. WITH regard to some of the conflicting dates such as the date of operation stated in the case summary prepared by Dayanand Medical College and Hospital as 22nd or 23rd June, 1997 while the respondents all through claiming the operation to have been performed during the second week of June 1997; the Counsel has submitted that the case summary was prepared on the basis of the statement made by the deceased Narinder Kaur at the time of admission to Dayanand Medical College and Hospital on 7. 7. 1997, two days after discharge from Oswal Hospital when her condition had drastically deteriorated and it could not be expected that she would have remembered the exact date of her previous operations. On the face of overwhelming evidence that the patient was admitted to the petitioner's nursing home on 7. 6. 1997 and discharged on 19. 6. 1997 after Laparotomy Operation, this difference of few days mentioned in the case summary could not be made the basis of any lacuna.

10. WITH regard to the other points advanced on behalf of the petitioner, Counsel for the respondents submits that the State Commission has duly considered the circumstances the situation that developed after the patient was admitted and negligently operated by the petitioners and rightly held that the opposite party who is the petitioner in this case is guilty of negligently performing the operation on Narinder Kaur which ultimately caused her death and is liable to compensate the complainants for his negligent act. Here is a case before us where there is no dispute that Laparotomy operation was conducted on Narinder Kaur. During the operation some "small gut loop was triable and (got) injured while separating from pelvic cavity". Patient was subsequently shifted and admitted to Oswal Hospital on 3. 7. 1997 and when the respondents found no ray of hope, shifted her again to Dayanand Medical College and Hospital where few days after admission, she expired. While her admission to Oswal Hospital and Dayanand Medical College and Hospital and the treatment received therein are neither at question nor in dispute, the main controversy pertained to where and who performed the Laparotomy operation on Narinder Kaur resulting in "post-abortion septic and post-operation faecal fistula and septicozic and septic shock?"

On the basis of the statement on affidavit, various documents produced by either side and after hearing the parties and after evaluation, the State Commission has concluded that the Laparotomy operation was conducted by the petitioner Dr. Ramesh Jain in his nursing home at Raikot.

11. LEARNED Counsel for the petitioner has picked up the main documents on which the State Commission relied for attack and has argued that firstly Exhibit Px (P-64) is only an Ultrasound Report and cannot be linked to any operation. Besides, it is an OPD slip, so question of admission into the nursing home or

operation does not arise. Secondly Exhibit Px1 (P-158) is an undated reproduction of some other Doctor's handwritten illegible hospital record which petitioner No. 1 wrote on the request of the complainant which should not be attributed to him; and thirdly that Annexure D (P-70) i. e. Oswal Hospital Admission Card which states that Dr. Ramesh (Jain) brought the patient is a tampered document. Besides, the registration slip (P-71) clearly mentions that Jagroop Singh brought the patient.

12. INsofar as Exhibit Px (P-64) which the learned Counsel terms it as a mere Ultrasound report is concerned, in our opinion, it may seem so while viewed in isolation but we have to read it in the background of a chain of events that have followed subsequent to 7. 6. 1997 when Narinder Kaur was subjected to Ultrasound test. In view of petitioner No. 1 Dr. Jain's visit of the patient at her village on 27. 6. 1997, her re-admission to Jain's clinic on 28. 6. 1997 and subsequently taking her to Oswal Hospital on 3. 7. 1997, the State Commission was right in holding that Exhibit Px amounted to an operation note. With regard to Exhibit Px1, (P-158), which is claimed to be legible reproduction of an otherwise illegible record written by another doctor on humanitarian ground, we cannot agree with the contention of the learned Counsel that it should be viewed as an innocuous and innocent piece of paper. In our view it is an important piece of evidence which is handwritten by petitioner No. 1 himself and has to be treated as an attempt by the petitioners to somehow pass on the problem and the blame to somewhere else. While dealing with this point the State Commission has stated: "first of all it is improbable that any doctor would agree to write the operation notes of some other doctor and in the end sign it also. Had it been so he would have definitely written the name of the doctor whose note he was reproducing. "

Before us, the learned Counsel has denied that the petitioner No. 1 has signed the note even though he admits the contents to be in his own hand. As stated above even if the petitioner has not signed the note, his admission of having written it with his own hands does not absolve him of his complicity. There is no reason why he did not name the Hospital or the Institution and the name of the doctor whose record or note he was reproducing. The onus was on him to prove his innocence in the absence of which, in the nature of the case there is no alternative other than drawing an adverse inference. Learned Counsel for the petitioners has next referred to the admission card of Oswal Hospital Annexure. D (P-70) where his client's name appears after scoring out some words and (P-58) which is alleged to be a photocopy of the original admission card where his name does not figure and contends that the former was a manipulated/ tampered document.

13. THE later document (P-58) has been produced at the revisional stage and not before the lower Fora and, therefore, as stated earlier we have disallowed any fresh evidence at this stage. Faced with this situation, Counsel refers to (P-71) which is the Registration slip of Oswal Hospital in which it has been written that

the patient was brought by Jagroop Singh (husband) and the column "referred to" is blank and contends that in view thereof, it would be wrong to hold that the patient was brought by "dr. Ramesh" (Jain). The State Commission has already dealt with this aspect and in our view rightly held that both Dr. Jain and Jagroop Singh, husband of the patient brought the patient Narinder Kaur to Oswal Hospital. Absence of the name of Dr. Jain in the Registration slip, which is prepared by a Registration Clerk, does not necessarily mean that Dr. Jain did not accompany the patient when his name figures on the Admission Card. The State Commission has rightly given higher credence to the note recorded by a doctor. The fact that the name of petitioner No. 1 has been clearly written after scoring out some words, in fact goes to prove that it was petitioner No. 1 who brought the patient. This also gets well with the chain of events and hence the argument of the learned Counsel that the petitioner No. 1 did not accompany the patient to Oswal Hospital falls to the ground.

14. ON the question of Dayanand Medical College and Hospital Case Summary (P-150), the Counsel picks up only the date of 22nd or 23rd June, 1997 when the MTP is stated to have been undertaken to contrast it with the repeated assertion of the complainant that the operation was conducted prior to 19th June, and argues that the inconsistency goes to prove that the complainants are not to be believed. In our view the argument would have no force in view of the explanation offered by the learned Counsel for the complainant that the date as given to the Dayanand Medical College and Hospital by the patient was a mere proximation and has to be seen in the background of the patient being admitted there in a very serious condition. Besides, we find that in this very sentence it has been mentioned that the MTP was undertaken in a private hospital in Raikot and further that "she was operated for pelvic abscess on 1. 7. 1997 where the patient suffered injury to small bowel while separating adhesions". The respondents all through have also been taking the position that on 1. 7. 1997, the second operation was conducted by the petitioner No. 1 and this summary too confirms that position. Under the circumstances, attempt of the Counsel to falsify the evidence too fails. A point had also been raised by the Counsel for the petitioner that Narinder Kaur was discharged from Oswal Hospital against medical advice whereas the respondents state that she was discharged by the hospital as doctors expressed their inability to do anything. This the Counsel contends is another contradiction which should be taken into consideration for disbelieving the respondents. In our view, this discrepancy has to be over-looked in the background of the deteriorating condition of the patient in Oswal Hospital and her subsequent admission to Dayanand Medical College and Hospital.

Another ground of defence advanced by the petitioners relates to their alleged political rivalry with the respondents. While the nature of such rivalry has not been specified, it is too far-fetched and incredible that the respondent No. 1 would cook up a story based on the sufferings of his wife to settle any score.

15. THE petitioner No. 1 has stated that Narinder Kaur visited him only thrice.

First on 7. 6. 1997 when she came with the complaint of chest and abdominal pain. The petitioner got her ultrasound test done and it was diagnosed to be a case of Gall Bladder stone and 4 months' pregnancy. But he did not prescribe any treatment. The second visit, as per the said petitioner was on 15. 6. 1997 with complaint of vomiting, diarrhoea and fever. As per petitioner's own written statement before the District Forum, the patient was examined in the OPD and given adequate treatment and was charged Rs. 250. This visit had been denied by the respondents/complainants. According to them, Narinder Kaur was admitted on 7. 6. 1997 and was operated few days thereafter and discharged on 19. 6. 1997. She was in the nursing home of the petitioner and the OPD slip of 15. 6. 1997 has been fabricated to create an alibi. We are inclined to believe the version of the respondents since we find that while the patient was alleged to have come to the petitioners with complaints of vomiting, diarrhoea and fever, the medicines prescribed as stated in the prescription (P-65) do not relate to these ailments. On the contrary, these medicines appear to relate to post operative cover. The version of the said petitioner with regard to the third visit on 20. 6. 1997 when her blood test was done also does not appear to be revealing the complete truth inasmuch as while the petitioner states (Para 3, P-174) that "her blood test was done and she was given the report of blood test and advised her to get the medicines for 2/3 days"; the petitioner No. 1 does not indicate what was the outcome of the blood test report and what medicine was prescribed. Respondents have stated that on that day only the report of the blood test which was done earlier was given and the patient was at home after discharge on the previous day. We thus find that the petitioners have miserably failed to find any loophole on the findings of the State Commission. In view of the foregoing discussion, we completely endorse the view expressed by the State Commission that the petitioners are to squarely blame for the grave error committed in the abortion operation of Narinder Kaur resulting in "gut loop cut" developing into septicemia and ultimately in her death. We find that the guilt of petitioner No. 1 is writ large throughout the series of proceedings. First, he attempted to disown any responsibility, despite the ultrasound test and MTP operation, and when discovered that he had committed a blunder in slicing a gut loop and unable to handle the case, took the patient to Oswal Hospital. With no worthwhile improvement, he appears to have prepared a case-sheet for the patient's admission to Dayanand Medical College and Hospital. All through the proceedings he did not appear to have any remorse or feeling for the patient and her family who had passed through the trauma resulting in her death. The petitioner, for his attempts to escape liability deserves to be severely penalized. Under the circumstances while we outright reject the revision petition and uphold the order of the State Commission, we also in addition impose a cost of Rs. 20,000 on the petitioners. We order accordingly. R. P. dismissed.