
(2013) 05 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Ramesh Kumar (Dr.)

APPELLANT

Vs

JAI KUMAR

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : 2013 4 CPJ 28

Hon'ble Judges : S.M.Kantkar J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition has been filed against the order passed by the State Consumer Disputes Redressal Commission, Panchkula, Haryana (in short as "State Commission") in First Appeal No. 200/2012 on 12.9.2012. That the petitioner a Pediatrician having a Ramesh Nursing Home at Jagadhari, Yamunanagar was the opposite party/respondent in the original complaint. Brief facts of case are that on 22.8.2007 Himanshi daughter of the complainant who was about 9 months age taken by complainant to the petitioner's nursing home for the complaint of vomiting and loose motion, the petitioner admitted her and treated by administering IV Fluid for the signs of dehydration on OPD basis. It was alleged that condition of patient was not improved and swelling in the inguinal region appeared which was shown to OP who assured that it will subside in due course of the treatment. OP performed few laboratory tests also. On 23.8.2007 the condition of the patient was not improved and he requested to relieve the patient and the OP unwillingly discharged the patient. Thereafter the complainant visited Madan Memorial Children Hospital, Yamunanagar who strongly advised the complainant to consult surgical specialist immediately for the swelling portion (strangulated hernia) in inguinal region. Thereafter, complainant approached Dr. Aggarwal Hospital a Surgical Centre at Jagadhri where an emergency operation of strangulated inguinal hernia was conducted on 23.8.2007 and discharged on 29.8.2007 from Aggarwal Hospital. The patient remained in Hospital upto 4.9.2007 after discharged. It was further alleged that the OP did not provide the proper treatment and failed to diagnose the disease of the patient for curing vomiting and loose motion and wrongly wasted valuable 24

Hours of the patient due to which the condition of patient became critical. Thus, alleging it a case of medical negligence and deficiency of service on the part of OP the Complaint No. 1083/2007 was filed before District Consumer Disputes Redressal Forum, Yamunanagar (in short "District Forum") The District Forum observed that OP refused to receive the summons and failed to appear before it wherefore the District Forum decided the case ex parte and awarded Rs. 25,000/- as for a compensation and costs. Against the order of District Forum the OP filed First Appeal No. 200/2012 in State Commission. The State Commission heard both the parties and considered the documentary evidence and referred few authorities of Hon"ble Apex Court held the OP liable for negligence and deficiency in medical service by making following observations: No doubt, a doctor may be held for negligence on two counts i.e. either the doctor is not possessed of requisite skill, which he professed to have possessed or he did not exercise with reasonable competence. It cannot be disputed that a patient cannot expect from doctor to possess highest standard of expertise or skill in that branch which he practices, but at the same time the subsequent events of the case have to be taken into consideration while dealing with the case of medical negligence, otherwise no medical professional can be fastened with liability even in the proven cases of medical negligence in his professional duty, as is evident from the instant case. The complainant approached the OP because the baby of the complainant was having a problem of strangulated hernia but the OP kept him unnecessarily and gave him treatment of loose motion and vomiting and failed to diagnose the disease of strangulated hernia. OP should have immediately referred the patient to some surgeon for getting the treatment of strangulated hernia. Strangulated hernia is a fatal disease and this disease; intestine of the patient can be burst at any time. It may lead to even death of the patient. Since, the required facilities for operation were not available in the hospital of the OP. The OP unnecessarily kept the patient in his hospital and then the OP decided to shift the patient to another hospital where all the necessary monitors were fixed for proper management and monitoring of the patient. But, baby of the complainant did not regain her health and it all proves that the OP failed to perform his duties in a manner expected from a qualified doctor. Thus, the deficiency in medical service is fully proved against the OP. Thus, OP is liable to compensate to complainant. The District Forum after considering the factual position on record has rightly passed the order dated 22.12.2011.

2. THEREFORE , the petitioner had challenged the order of State Commission through this revision petition before us. We have heard the learned Counsel for petitioner who argued vehemently to prove his case that petitioner has not committed any negligence. As per his submission the OP i.e., Dr. Ramesh Kumar initially diagnosed the patient Himanshu as a case of strangulated hernia and issued a referral slip to consult a Surgeon for operation. But due to persistent request and pressure from the complainant the OP admitted the child and gave a treatment by IV fluids for c/o vomiting and diarrhea. Subsequently on the next day i.e., 23.8.2007 patient was discharged. Also the OP is not liable because

there is no expert evidence produce by the complainant. Hence there was no negligence by OP. We have perused the referral slip Annexure P3 issued by OP which clearly shows that OP had referred the case to NK. URO Clinic to Dr. Narinder Kashyap who was a Urologist having qualifications as "MS and MCh Urology". This was a wrong referral; i.e., referring a child of strangulated hernia to a Urologist instead of General Surgeon or any Pediatric Surgeon.

3. EVEN otherwise it is pertinent to note here that according to the medical literature strangulation hernia also presents with vomiting and diarrhea along with pain etc. But, the OP has continued the treatment at his nursing home with the pressure of patient's attendees for the gastroenteritis instead of going for a surgery. Hence conservative treatment was given by OP in such emergency. Therefore, it a matter of surprise that the said doctor treated the patient as per directions of patient's attendees. It is not an acceptable Doctor -Patient relationship. When doctor examines the patient arrives with a certain diagnosis and decides the line of treatment; thereafter it is not a prudent approach of the doctor to deviate from the standard of practice on the words of patient attendees. To prove his contention that he treated the child for gastroenteritis on the say of patient's attendee, the petitioner doctor has not produced any evidence. Hence, this amounts to deficiency in service.

4. WE relied upon the decision of this Commission in Wilfred D" Mello v. Dr. Manoj Dhruve and another, FA 32/2003, that non -referral of the case to proper doctor amounts to negligence; i.e., is not acting in accordance with standard of practice. Also, Bolam's case Bolam v. Friern Hospital Management Committee,, (1957) 1 WLR 582, similar view explained. Under the circumstances and the discussions we hold the petitioner is deficient in discharging his medical services. We do not find any illegality or irregularity in the impugned order passed by the State Commission. Therefore, we uphold the same order of State Commission and dismiss this revision petition.