(2015) 09 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Case No : 950 of 2015

RASHAL KANWAR & ORS — APPELLANT

Vs

GANGA RAM HOSPITAL & ORS — RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 NCDRC CK 0019

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

Advocate : Hemendra Sharma, K S Bhati

Final Decision : Complaint dismissed

Judgement

S. M. Kantikar, Member

[1] This complaint has been filed under Section 21(a)(i) of the Consumer Protection Act, 1986 against the OPs alleging careless attitude and negligent practice of hospital in treating the patient, late Shri Adraj Singh, due to which, the patient passed away, untimely. The deceased patient incurred heavy expenditure. This complaint is filed by Mrs. Rashal Kanwar, widow of the patient, along with her four children and prayed for compensation to the tune of Rs.1,86,77,120/-.

[2] Heard the learned counsel Shri Hemendra Sharma, for the complainants, at the admission stage of this case. He submitted that, the patient was admitted in Sir Ganga Ram Hospital (SGRH- the OP 1) on 29.6.2013 in a serious condition, as an emergency. It is alleged that, the death of patient was attributable to the negligent conduct of the doctors at OP/Hospital. The patient was diagnosed with ruptured aortic aneurysm, on 29.6.2013 but it was treated, on 23.9.2013 i.e. almost after 3 months of the diagnosis. It was a serious medical emergency that needs to be treated immediately, with surgical repair. The doctors treated for chronic kidney disease, hypertension, seizure disorder and sepsis (recovered) but forgot to treat ruptured aortic aneurysm. Hence, he was repeatedly admitted to the OP/Hospital and due to lack of proper treatment, passed away. The

complainant also submitted that the principle of ''res ipsa loquitor'' should be applied in this case.

[3] We have perused the medical record, filed along with this complaint. It reveals that, the patient was admitted with history of decreased urine output, since 11/2 months, with once episode of back pain and loss of consciousness. Patient was a known case of HTN, DM type-II, CKD on MHD, seizure disorder, AKI on CKD and bilateral DJ stenting. Patient was admitted in Jaipur at Monilek Hospital from 03-06-13 to 29-6-2013 where DJ stenting was done and managed conservatively. Then he was shifted to SGRH for further management.

[4] The patient was admitted in Department of Nephrology under Sr. Consultant Dr. D. S. Rana, OP 2. After examination, the patient was diagnosed as :

Ruptured aortic aneurysm (P/endovascular stenting),

Chronic kidney disease-5 OM MHD,

Hypertension,

Seizure disorder, sepsis (recovered).

Immediately, NCCT for abdomen was performed, which revealed ruptured aortic aneurysm. On 1-07-2013, the patient, under local anesthesia, underwent Aortic Angioplasty, with endovascular repair of Infra-renal abdominal aortic pseudo-aneurysm, using covered stent (endovascular stent graft TVE 30-80-PF), through bilateral CFA approach.

The operative findings are as follows: - "Infra-renal abdominal aortic pseudo aneurysm about 6 X 6.5 cm in size (situated posterolateral). Neck of aneurysm around 1 cm in size about 2.5 cm distal to origin of SMA. Post deployment of stent, no flows noted in pseudo aneurysm sac and good flow of contrast noted in SMA and abdominal aorta stent graft."

[5] Thereafter, the patient remained anuric and dialysis dependent. He was referred to Urology, where DJ stent was removed on 03.07.13. On12.07.2013, the vascular surgeon created left brachio-cephalic AV fistula for regular dialysis. Patient was discharged on 19.7.2013 in a stable condition.

[6] Thereafter, patient''s condition worsened, hence he was re-admitted on 26.07.2013. For Hypertension and Chronic Glomerulonephritis, OP performed renal transplant surgery on 14.10.2013, he was put on immunosupressants and was discharged on 4.11.2013, with follow up advise. Again, he was admitted on 15.11.2013, the excision of pseudo aneurysm near left brochio cephalic fistula and ligation of left cephalic vein was done, under local anesthesia.

[7] Again, patient was readmitted on 9.12.2013 and on 18.12.2013, he was treated for severe anemia (Hb-5.4g%). Several investigations like upper GI endoscopy, NCCT of whole abdomen, Heamogram were performed. Upper GI endoscopy was normal, the Colonoscopy showed large growth in colon, took a

biopsy. CT abdomen showed heterogeneous lesions in right hepatic lobe, para-aortic, retroperitoneum, bilateral psoas, right iliacus bilateral gluteal, right anterior and lateral abdominal walls, pancreas, right kidney. Also suspected the IVC and right renal vein thrombosis with possibility of PTLD. The patient was treated with IV antibiotics (Meropenem), blood transfusion, albumin and other supportive treatment. The patient was on immunosuppressant. Medical oncology opinion was taken. Patient''s Attenders were explained about the grave prognosis. Patient was discharged on 23.12.2013 at the request of the Attenders as they wanted to take the patient home. Subsequently, patient expired on 3.1.2014.

[8] After careful perusal of patient''s entire hospital record and the clinical summary, it is clear that, it was an emergency; OP diagnosed the patient after proper investigation. Initially, treated the ruptured aortic aneurysm, thereafter, patient developed different complications which were treated and monitored, at every stage. The medical record clearly revealed that the patient was suffering from multiple diseases. We don''t find any flaw or deviation from the standard of treatment. Despite the best efforts of the treating doctors, the patient expired.

[9] We rely upon the case "Martin F. D Souza Vs. Mohd. Ishfaq, 2009 AIR(SC) 2049" wherein the Hon''ble Apex court, observed that, "Simply because a patient has not favorably responded to a treatment given by a doctor or a surgery has failed, the doctor cannot be held straightway liable for medical negligence by applying the doctrine of res ipsa loquitur. No sensible professional would intentionally commit an act or omission which would result in harm or injury to the patient since the professional reputation of the professional would be at stake. A single failure may cost him dear in his lapse".

Further, it was also observed that,

When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.

[10] In the case of Kusum Sharma Vs. Batra Hospital, 2010 1 CPJ 29 SC the Hon''ble Apex Court laid down certain principles, the relevant Para is reproduced as under:

[11] The complainant''s allegation was that the patient was not treated properly, during emergency by the OP-2. But, in fact, patient was treated by Angioplasty, with angio-vascular repair for the rupture on 1.7.2013 i.e. on the 2nd day of hospitalization, in the OP/Hospital.

[12] Considering entirety, certain harsh realities cannot be glossed over. "No cure is not a negligence of treating doctor". The complainant''s allegations are

unsustainable and we do not find any plausible reason to admit this case. Accordingly, we dismiss this complaint, at the admission stage.

