(1992) 04 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

RENU JAIN — APPELLANT

Vs

ESCORTS HEART INSTITUTE And RESEARCH CENTRE — RESPONDENT

Date of Decision : 10-04-1992

Acts Referred:

Citation : 1992 0 CPC 406 : 1992 2 CPJ 391 : 1993 1 CLT 66

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. -THE late Shri Anil Kumar Jain was admitted in the Hospital (Escorts Heart Institute and Research Centre) on the 25th February, 1991 for Coronary By-pass Surgery. THE coronary by-pass surgery was performed on the 4th March, 1991 and the patient was discharged form the Hospital on the 14th March, 1991.

2. ON the 21th March, 1991 the patient was received was reviewed in O.P.D. During the review it was found that in the wound in the thigh above the knee there was a mild redness and intimation and slight blackening. He was asked to report for review again in the O.P.D. on the 25th March, 1991. According to the petition, the patient attended O.P.D. on this date whereas at the hearing the respondent stated that he skipped going to O.P.D. on this date. He was due to be reviewed in O.P.D. on the 13th April but he actually went to O.P.D. only on the 3rd April, 1991 on the ground of severe thigh wound intention. He was, however, advised dressing of the wound with Hydrogen Peroxide and to continue the medicines already prescribed. He was readmitted in the hospital in a state of coma on the 4th April, 1991. (Not 14th April as mentioned in the complaint petition). He died on the 16th April, 1991 in the hospital. The petitioners/ complainants have alleged many deficiencies on the part of the respondent hospital in the treatment of the patient (i) According to the petitioners, the patient was discharged on 14th March, 1991 after a major surgery negligently, wrongly and prematurely, contrary to the practice throughout the world. According to them there was an omission on the part of the respondent hospital in not anticipating post operative complications which generally arise after

coronary by-pass surgery.

(ii) On 21st March, 1991 when the Hospital in O.P.D. found that the wound above the knee was infected, it was evident that he was carrying a post operative infection contracted from the hospital and, therefore, he was given anti-biotic medicines. According to the petitioner, the Hospital was responsible for the infection.

(iii) Even though there was evidence of infection in the patient''s system yet the Doctors failed to, advise microbiological investigation and culture and sensitivity tests for the determination and treatment of the infection.

(iv) There was failure on the part of the Hospital in giving the patient proper treatment against infection with the result that he suffered from thromboembolism phenomenon which itself is a post-operative complication. It was his thrombo embolism which eventually resulted in the patient going into coma on the 4th April, 1991.

According to the petitioners the patient''s death was the direct result of infection coupled with post operative disturbance in the patient''s physiology. The failure of the respondent Hospital was allegedly further compounded by its omission to undertake pathological autopsy. According to the petitioners this was avoided intentionally, contrary to the general practice throughout the world only with a view to cover up the negligence and deficiencies in treatment The petitioner prayed for compensation of Rs. 21.44 lacs along with interest at 18 percent.

3. THE petition was resisted by the respondent Hospital who disclaimed altogether the charges of any deficiency in service to the patient and negligence in treatment which could have possibly, either directly or indirectly, caused the death of the patient (i) According to the respondent, the patient was discharged on 14th March, 1991 because his post operative recovery was smooth and uneventful. (ii) THE infection in the wound above the knee was superficial and mild. THEre was no evidence of severe infection: there was no fever, no discharge. Consequently, the antibiotics prescribed on the'' 14th March, 1991 at the time of discharge, after the patient had undergone coronary by-pass surgery, were withdrawn on 21st March, 1991 when he was reviewed in O.P.D. No antibiotics were prescribed at any time thereafter even when his case was reviewed in O.P.D. on the 3rd April, 1991.

In the connection it was further submitted that the blood report of the patient of the 4th april, 1991 showed that his TLC and DLC were normal and there was no evidence of any infection necessitating administration of antibiotics. (iii) According to the respondent Hospital the patient died of brainstem haemorrhage followed by acute renal failure and cardio pulmonary arrest. The brainstem haemorrhage has no relationship with the coronary by-pass surgery or with the infection of the wound above the knee.

4. IN fact, the respondent had submitted massive expert evidence on the cause

of the patient going into coma on the 4th April, 1991 and his eventual death. They placed on record tho diagnoses made by four different Neurologists of the Hospital (Dr. M.L. Suri, Dr. M.S. Gulati, (both on 4.4.1991) Dr. H.N. Aggarwal (undated) and Dr. A. Goel (15.4.1991) who have recorded on the case sheets that the fundi of the patient revealed bilateral haemorrhage that he is likely to have had brainstem haemorrhage, intracranual bleed with brainstem involvement, clinical signs of cerebral death etc. Two neurologists summoned by the relatives of the patient Dr. L.K. Malhotra and Dr. Amitab Verma (both on 4.4.1991) also recorded, after examination of the patient that he had bilateral fundi haemorrhage; there was loss of practically all brainstem function with diagnoses, "Embolic v. Cerebral haemorrhage Easilar Artery". The respondent has averred that the allegation that the patient suffered from thrombo embolic phenomena in brain from the leg wound is wholly baseless. On the contrary it was suggested that he was a known case of hypertension which could possibly have resulted in brainstem haemorrhage.

5. DURING the hearing the Counsel for the petitioners refuted that the death was due to brainstem haemorrhage and maintained that it was due to thrombo embolism arising from the wound in the thigh. This was based on the diagnosis report of Dr. Verma of 4th April, 1991 wherein he had tried to explain the coma and loss of brain-stem functioning as due to either embolic or cerebral haemorrhage. He was, however, unable to attack the credibility of massive evidence, nay proof, of the cause of death of the patient viz. brainstem haemorrhage followed by renal failure and cardiac arrest. He was also not able to establish that the patient had any thrombo embolism and that the brainstem haemorrhage was embolic in origin.

6. THE petitioners have not produced any evidence to show that the petitioner was having any infection when he was discharged prematurely. In fact, we feel that it would have been wrong to keep him hospitalised when, in the opinion of the medical experts, the condition of the patient did not necessitate or justify continued hospitalization. Again the infection in the knee was mild and, therefore, did not require any anti-biotic treatment; in fact the antibiotics were withdrawn when this infection in the knee was noticed for the first time on review in the O.P.D. on 21st March, 1991. There is also no evidence at all that the said infection caused thrombo embolism. There was also no need but microbiological test of the infection as the infection was superficial and mild and there was no fever. In fact, the subsequent blood examination on the 4th April, 1991 established that there was no infection in the blood.

In our opinion, it is established beyond doubt that the patient''s death was caused by brainstem haemorrhage and there was no omission or negligence on the part of the hospital authorities in treating the patient.

7. AS regards the next question of carrying out of autopsy, even according to the medical text Gradwohl''s Legal Medicine, third edition, produced by the Counsel for the petitioner, autopsy is a must when death of a person is sudden,

unexplained, unexpected or violent. This was not a medico legal case and the cause of death had been determined precisely. In fact, according to the medical text it is essential to undertake autopsy in cases where death has been caused due to an act of criminality, as an aid to presentive medicine, or when death is caused by road, industrial or domestic accidents, or when the precise cause of death has to be determined for the purpose of pension and insurance claims and in any case where death could possibly have been caused by hazardous procedures adopted in medical practices. There is no doubt whatsoever it was not a medico legal case and-the cause of death, brainstem haemorrhage, was not in doubt. Therefore, there was no occasion for the hospital authorities to advise the relatives of the patient that they could have an autopsy done in this case. It may be noted that according to Indian cultural beliefs and cremation practices, people are sentimentally opposed to a dead body being cut up. In fact, generally autopsy is resisted.

8. IT was also alleged at the hearing that the hospital authorities failed to inform the relatives of the patient that he was suffering from brainstem haemorrhage and that there was little hope of recovery. We do not find that there was any deficiency on the part of the hospital in this respect. IT is also be noted that the patient''s own doctor Dr. Verma had recorded on 4.4.1991 and again on 5.4.1991 that poor prognosis had been explained to the relatives. There is, therefore, not the slightest evidence of any deficiency in service and consequent negligence in the diagnoses and treatment of the patient in the hospital. The petition is a fishing complaint. The same is dismissed as devoid of any merit. We must record that at the conclusion of the hearing the respondent, purely on compassionate considerations, agreed to refund ex- gratia the amount of Rs. 20,000/- deposited by the patient at the time of his readmission on the 4th April, 1991. He, however, reiterated that there had been no deficiency in diagnoses and treatment of the patient in the hospital and therefore, the refund could not be interpreted, directly or indirectly, as admission of any lapse on the part of the respondents in this case. The Counsel for the petitioners assured that they would accept the offer in the spirit in which it is made and his clients would not agitate the matter any further. Appeal dismissed.

