(2015) 04 NCDRC CK 0232

In the National Consumer Disputes Redressal Commission

SAMEER KAUSHAL — APPELLANT

Vs

BALJEET KAUR — RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Citation : (2015) 04 NCDRC CK 0232

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

Final Decision : Petition dismissed

Judgement

1. WHEN we''re sick or hurt, we often rely upon medication to alleviate our symptoms or pain. We trust in doctors, nurses, pharmacists, and hospitals or other health care facilities to give us the right medications in the right dosage to fix what''s wrong. When a doctor, hospital or pharmacy makes an error that results in an overdose, there can be serious consequences. Many prescription drugs can be dangerous or even deadly in sufficient doses. The complainant, Smt. Baljeet Kaur, mother of the complainants 2 to 4, aged about 69 years, took treatment for urinary tract infection (UTI) from the OP/ Petitioner Dr.Sameer Kaushal. OP advised injection ''Mikacin'' (Amikacin). After 2 -3 days, she found that she was losing hearing power, which was informed to the OP. However, OP told to continue the injection, as it was necessary for UTI. Further the patient''s condition deteriorated and the complainant became absolutely deaf. The OP treated her from 4.3.2006 to 2.4.2006. The complainant consulted Dr. Harpreet Singh, ENT Surgeon on 2.4.2006 who certified her as absolutely deaf and told that it was due to ''Mikacin'' overdose. On 3.4.2006, she consulted Dr. K. S. Chug, Professor of Nephrology, who also opined that due to overdose, her kidney was severally affected. She was admitted to PGI, Chandigarh from 4.4.2006 to 13.4.2006, dialysis was performed. Thereafter, she took OPD treatment at PGI. Therefore, alleging negligence committed by the OP/doctor who carelessly prescribed Mikacin for 21 days, a complaint was filed by the complainants before the District Forum, Sas Nagar and prayed for total compensation of Rs. 20 lakhs.

2. THE District Forum by its order on 6.3.2009 allowed the complaint and

directed the OP to pay Rs.2.25 lacs to the LRs of the deceased with interest @ 9% pa w.e.f 4.3.2006 till its realization.

3. THAT aggrieved by the order of District forum, two cross appeals were filed before State Commission, Punjab, Chandigarh, as the petitioner/OP filed first appeal No. 480 of 2009 whereas, the complainant filed F.A. No. 549 of 2009 for enhancement of compensation. The State Commission vide its common order dated 18.12.2013 disposed of the aforesaid first appeals thereby dismissing the FA 480/2009 and allowed the FA 549/2009 of the patient/complainant and enhanced the compensation from 2.25 lacs to 4 lacs. Therefore, the petitioner/ OP filed the present revision petition against the impugned order.

4. HEARD the counsel for the parties. The counsel for Petitioner/ OP vehemently argued that, the OP -Dr.Kaushal was a Physician , qualified as M.D.Medicine, and practicing for past 22 years. The patient was suffering from severe UTI. The OP performed laboratory investigations which revealed plenty of pus cells in urine and 4+ sugars, her blood urea was 90 mg% and Serum Creatinine was 2.1mg%. The urinary culture showed 4+ sensitivity to Amikacin and 3+ sensitivity to Amoxyclav, there was resistance to other antibiotics. Therefore, injection Amikacin was started with initial 10 days i.e. from 4 to 13/3/2006, the dosage was correct as 500 mg BD(twice a day) During this period, the OP monitored the patient with routine urine analysis with Blood Urea and Creatinine level, which showed improvement.

5. COUNSEL further submitted that Amar Hospital of OP -1 is a Charitable hospital, therefore OP is not liable. The complainant suppressed the several previous diseases, had not come with clean hands. He brought my attention to the Discharge cum follow up card of PGI, which mentioned about the patient, having history of diabetes for 35 years, started on insulin 20 years back due to poor control, and h/o hypertension 8 years. She had decreased vision (Proliferative retinopathy), renal stone disease, underwent pyelolithotomy 20 years back. Patient was on antihypertensive drug AMLOPRESS L, and a Lisinopril - another ''nephro -toxic'' drug. Therefore, the complainant had suppressed about her urinary tract infections and treatment taken previously. Also, she had suppressed, that she suffered and took treatment for cough and ear discharge. The counsel for OP further submitted that, there are multiple causes of sensory and neural deafness, whereas, Dr. Harpreet Singh had declared the patient as profound deaf , without conducting specific diagnostic tests to evaluate the hearing, like brain stem evoked response and impedance audiometery. Also to establish the deafness that it was due to excessive dose of Amikacin, the drug level in blood assay was not done . Thus, the treatment given by OP was correct, there was no negligence.

6. THE counsel for complainant reiterated the submissions made in the complaint. He further submitted that, the OP did not follow standard of treatment, did not monitor the patient continuously.

7. TO get a clarity, entire record from District Forum was requisitioned. Perused the relevant medical records, prescriptions given by OP. It transpired that, OP prescribed Injection Mikacin for 7 days initially on 4.3.2006 thereafter repeated same on11.03.2006 and 17.03.2006. The patient was investigated for urine analysis on the same dates. It is pertinent to note that, the complainant purchased those injections and produced the respective bills for corresponding dates. The prescription is hereby reproduced as below: A. 04.03.2006 Injection Mikacin 500 I/M B.d. Tab. Cenmox CC 625 Augmentin 625 1 1 Tab. Mobilid 200 1 1 1 Plenty of fluids For one week B. 11.03.2006 Pus Cells 25 -30/HPF Repeat for 7 days C. 17.03.2006 Pus Cells 10 -12/HPK Repeat for 8 days.

8. AS per PGI medical record Annexure P -6, that,the patient was admitted in PGI Hospital on 04.04.2006 till 13.4.2006, and diagnosed as a case of Type II Diabetes Mellitus, Hypertension, all microvascular complications present, renal stone disease, recurrent urinary tract infection. She had pre existing kidney disease, was diagnosed as a case of Acute on chronic renal failure due to UTI/ urosepsis. She had also informed the doctors at PGI about diminished hearing from 28/ 29.03.2006.

9. THE main controversy is, what was the actual dose of Amikacin and how many days it was administered? As per the complainant''s averment it was 58 doses (from 04.03.2006 to 02.04.2006), the PGI discharge -cum -follow up card Ex. C19 discloses, she took 28 doses i.e. 1BD X 14 days and as per chemist''s bills No.22, 45 and 62 total 42 doses of injections were purchased, whereas, as per Dr. Bhansali''s evidence, doses were 30 only. Therefore, it confirms that, prescriptions, laboratory tests and purchase bills clearly establish that, Amikacin , as per advice of OP , the patient took injection Mikacin for 21 days.

10. IN this context , I have gone through the medical text from Harrison''s Internal Medicine the recommended duration of therapy of Amikacin is 14 days i.e. 28 doses of 500 mg/dose with proper monitoring. According to medical literature, Amikacin is one of aminoglycosides, should be carefully used to prevent nephrotoxicity especially in high -risk patients. Monitor renal function frequently during its use. Aminoglycoside nephrotoxicity is directly dependent on the dose and duration of therapy. Thus, nephrotoxicity is more likely to occur if large doses are given over prolonged periods, or usual doses are given to patients with underlying renal disease. Hence ,use the lowest dose and shortest possible course of therapy is advisable. Serial monitoring of renal function (serum creatinine every other day) should be carried -out for early detection of nephrotoxicity. Thus, the patients, treated with parenteral Amikacin should be under close clinical observation because of the potential ototoxicity and nephrotoxicity associated with their use.

11. IT was also proved from the statement of Dr. Anil Bhansali at PGI, before District Forum that, the use of 500 mg Amikacin, twice a day for 7 to 10 days, its prolonged use without monitoring will cause toxic effects on the kidneys and ears in a patient with preexisting compromised renal functions.

12. IN general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing service. In Achutraos case the Honble Supreme Court held that;

13. IN the instant case the OP had failed to justify about his reasonable medical advice /treatment given to the patient. The medical records clearly speak about , the Amikacin was prescribed in the dose of 500 mg BD for initial 7 days, then 7 + 7 days, thus certainly it was an overdose. It is difficult to fathom that, in spite of knowing the patient was more than 60 years with severe UTI, severe diabetic status, and altered Renal Function Tests (RFT), the OP failed to advice other antibiotics instead of Amikacin. It would have prevented ototoxic and nephrotoxic effects of Amikacin over dose. It is very pertinent that, the OP should have been more careful while advising such high doses Amikacin for longer duration, to the elderly patient having different co - morbidities, thus it is unacceptable. The medical recordclearly revealed the increasing level of blood urea and serum creatinine and there was persistent UTI in the patient. Thus, there was no cure but, it has aggravated the renal damage, and the ototoxicity. The patient underwent dialysis also at PGI during her stay. It was necessary to monitor such patient during treatment. Also, the estimation of Serum Amikacin drug level was helpful, but such testing facilities are not available in each and every place in India. Thus, in my view, OP did not follow the standard of medical practice.

14. IT is well settled that, in cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, then in such a case an action in torts would be maintainable. As in Laxman Balkrishna Joshi (Dr.) Vs. Dr. Triambak Bapu Godbole, 1969 AIR(SC) 128,the Hon''ble Supreme Court held that, "a medical practitioner has various duties towards his patient and he must act with a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. This is the least which a patient expects from a doctor. In the present case the doctors mainly the OP -2 and 4 did not bother to find whether there was any consent form from the patient himself or whether any anaesthetic preparation was made or not as per standard medical guideline."

15. IT was an act of omission by the OP, thus a medical negligence. OP cannot take defense that the patient suppressed previous illness or her diabetic status. I consider that the Principle of "Eggshell Skull Doctrine" is applicable in this case, wherein liability exists for damages stemming from aggravation of prior injuries or conditions. The '''''eggshell skull rule''''' is a legal doctrine, used in both, law of tort and criminal law that holds an individual liable for all consequences resulting from their activities leading to an injury, even if the victim suffers unusual damages due to a pre -existing vulnerability or medical condition.

16. THEREFORE , on the basis of forgoing discussion, there is no need to interfere in the order of State Commission. Hence, this revision petition is dismissed.

