
(2001) 02 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

SAYED AMZAD HUSAIN NAQVI

APPELLANT

Vs

LAKHANPUR HOSPITAL, THROUGHDR. V.K. AGGRAWAL

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Citation : 2001 2 CPJ 130

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Complaint dismissed

Judgement

1. BY means of this complaint the complainant has prayed for a sum of Rs. 8,000/- which was incurred in the birth of his third child and a sum of Rs. 15,000/- for the 4th child. A sum of Rs. 4,56,000/- has been claimed for bringing up and educating the 4th child. A sum of Rs. 50,000/- has been claimed on account of mental tension of complainant No. 1 and a sum of Rs. 1,50,000/- has been claimed on account of mental tension of complainant No. 2.

2. THE facts of the case stated in brief are that the complainant No. 2 is the wife of complainant No. 1. THE complainant No. 1 is the employee of Police Department. THE first child was born in the year 1986 in the Najrath Hospital through caesarean. THEreafter two daughters were born in the years 1988 and 1990 through caesarean. When the 3rd daughter of the complainant was born it was decided that no more issues are required. Hence she consulted the opposite party Nos. 2 and 3 who advised for sterilization so that she would not conceive a child in future. At the time of birth of 3rd child about Rs. 8,000/- were spent and she was assured that no further child will be born. THE complainant No. 1 in the year 1992 was posted at Police Station Behta and Gokul in Distt. Hardoi. When the complainant No. 2 got her urine examined, she came to know that she is pregnant. THEreafter another test of urine was got done on 24.5.1992 in Kulvanti Hospital, Kanpur and the pregnancy was confirmed. She was also told that now the abortion cannot be done and if it is attempted it may cause death of the mother also. On account of no facility at Hardoi, the complainant had to go Kanpur for investigations. In the birth of 4th child about Rs. 15,000/- have been

spent which occurred on account of the negligence of the opposite party Nos. 2 and 3, i.e. doctors. She has given the details of Rs. 4,56,000/- to show that she will have to spend this much amount for bringing up and educating the 4th child. It has also been alleged that the complainant suffered mental tension etc. The opposite parties have denied the allegations of the complainant and has alleged that there was no negligence on their part in conducting the sterilisation operation. It is also alleged that there is fool proof method of sterilisation and even after sterilising in rare cases the pregnancy occurs. It is also alleged that no 4th child birth took place. It is also alleged that after sterilisation operation the lady complainant No. 2 was advised to come for check up in the hospital but she never came for her check up, hence the opposite parties are not liable for payment of compensation. It appears that this certificate of birth of 4th child has been issued in collusion with some employees of a particular hospital. All the precautions were taken while conducting the sterilisation operations. So far the best technique available is the pomeory technique and it is widely used. This technique was also used in the instant case for sterilisation of complainant No. 2.

It is further alleged that the failure of the cases is not on account of negligence of the doctors but on account of the flaw in the technique itself. It is further alleged that if the complainant No. 2 would have consulted the opposite party then the pregnancy could have been terminated by them. It is further alleged that the opposite parties are not liable to give any compensation.

3. THE parties led evidence in support of their respective contentions. We have heard the learned Counsels for the parties and perused the case. Learned Counsel for the complainant has argued that the sterilisation operation was done by the opposite party but inspite of it, the wife of the complainant Smt. Vijat Naqvi conceived and delivered the child. According to the learned Counsel for the complainant it was on account of the negligence of the doctors that the sterilisation operation was not successfully done and, therefore, the opposite parties are liable for payment of compensation. Learned Counsel has placed reliance on the case of *State of Haryana & Ors. v. Smt. Santra*, I (2000) CPJ 53 (SC)=IV (2000) SLT 93=2000 (2) JCLR 308 (SC). That case was decided by the Hon"ble Supreme Court. In that case on the basis of the facts found, it came on record that only right Fallopian Tube was operated upon and left Fallopian Tube was left untouched. It is common knowledge that ovaries produce an ova in the alternate month. Both the ovaries do not produce ova at the same time in every month but one produces ova in one month and the other ovary produces ova in another month. If any of the Fallopian Tube is not operated upon then the ovary produces ova which comes down through the Fallopian Tube. It settles down in the uterus for further development. As the left Fallopian tube was not operated upon in the case before the Hon"ble Supreme Court, it was held that there was negligence on the part of the doctor who performed the operation inasmuch as he failed to operate both the Fallopian tubes during the sterilisation operation in order to prevent the pregnancy. In the present case there is no evidence of this nature on record, therefore, this case law does not help the complainant. On the

other hand in the case of Smt. Jaiwati v. Parivar Seva Sanstha & Anr., III (1999) CPJ 167=1999 CTJ 601 (CP) (SCDRC), decided by the State Commission, Delhi, it was held that medical books clearly proves that certain risk of failure is inherent in female sterilisation. It was further held that risk cannot be obviated despite due care and caution. It was also held that there was no negligence of the doctors who had done the sterilisation operation, because if a medical procedure fails and the doctor cannot be held guilty of negligence. Certain authorities were also discussed in the said judgment. We are in agreement in what has been said in the above mentioned judgment and find that there was no negligence of the doctor in the present case.

4. SIMILARLY, in the case of Gauridevi Remeshwar Singh v. Family Planning Association of India & Ors., III (1998) CPJ 584, the State Commission, Ahmedabad also had the similar opportunity and held on the basis of authorities! that no method of sterilisation is entirely safe and complete and there are possibilities of failure of operation due to many natural reasons also. Therefore, pregnancy or fertilisation after operation is always not sufficient to jump to the conclusion of negligence on the part of doctor. This was taken from "Operative Obstetrics" (VIIIth Edition) Page 686 written by Munoro Karr. Thus this case law also negatives the case of the complainant. Thus we find on the basis of authorities that in the case of female sterilisation operation is not 100% safe and pregnancy can occur even after sterilisation operation is done. The negligence of the doctor cannot be attributed if the doctor has taken due care and caution while performing the sterilisation operation. The complaint is, therefore, liable to be dismissed. ORDER The complaint is dismissed. There will be no order as to cost. Let copy of this order be made available to the parties as per rules. Complaint dismissed.