(2012) 09 NCDRC CK 0086

In the National Consumer Disputes Redressal Commission

Shanta V Gowda — APPELLANT

Vs

Kempegowda Institute Of Medical Science — RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 522

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : S.N.Bhat , E.C.Vidya Sagar , Rajni K.Prasad

Judgement

1. SMT.Shanta V.Gowda, Appellant herein and the complainant before the State Commission has filed the present First Appeal being aggrieved by the order of the State Consumer Disputes Redressal Commission, Karnataka (hereinafter referred to as the ''State Commission '') which had rejected her complaint of medical negligence against M/s Kempegowda Institute of Medical Science and Others, Respondents herein.

2. IN her complaint before the State Commission, Appellant had stated that her late husband (hereinafter referred to as the ''patient '') who was working as a Lecturer in the Bangalore INstitute of Technology suffered from fever and severe headache on 15.07.1993 and visited the Respondent No.1/Hospital at its out-patient department wherein he was attended by one Dr.Prabhu and prescribed medicines and advised rest. Since he did not get relief, he again visited the out-patient department of Respondent No.1/Hospital 3 days later where medicines were changed and when his condition did not improve, he got admitted in Banashankari Hospital from where he was discharged after being put on a drip the entire day with the advice that he should visit Respondent No.1/Hospital. His medical problems aggravated on 20.07.1995 and he again went to Respondent No.1/Hospital where he was examined by Dr.Channaraya, Respondent No.2 who prescribed medication diagnostic tests and was thereafter advised admission. The patient was admitted to the Respondent/Hospital at 9.45 am. Thereafter, he underwent an ECG and later he was put on drip and shifted to a special ward on the 3rd floor of Respondent No.1/Hospital. Though, the patient continued to

experience acute discomfort and his medical condition was deteriorating and despite requests from his relatives, no doctor came to see him till 4.00 pm when a house-surgeon checked his blood pressure which was found to be very low. Even thereafter, when his condition became critical, proper emergency treatment like giving oxygen was not provided and at 5.30 pm, the doctors advised that the patient be shifted to Manipal Nursing Home but the driver of the ambulance was missing and could only be located at about 6.00 pm by which time the doctors were trying to revive the patient who unfortunately thereafter passed away. An internal Enquiry Committee set-up to look into this incident gave a report which was contrary to the facts on record and therefore, did not find that there was any dereliction of duty. Being aggrieved because of the avoidable death of her husband due to the callous and negligent attitude of the Respondent No.1/ Hospital and the Respondent No.2 and other doctors, Appellant filed a complaint before the State Commission and requested that Respondents be directed to pay the Appellant, Rs.17 lakhs with interest @ 18% per annum from the date of death of her husband till the date of payment for mental agony, loss of consortium, loss of earnings and general damages along with litigation cost. The allegations of medical negligence were denied by Respondents who stated that each time the patient visited the Respondent No.1/Hospital, he was carefully examined, prescribed tests and then got admitted to the hospital with a diagnosis of enteric fever and acute gastroenteritis wherein despite medical treatment, he died due to cardiac arrest. It was further contended that the complaint was no longer maintainable since the Appellant had re-married and therefore, under Section 2(11) of CPC, Appellant is no longer the legal representative of the deceased husband.

The State Commission after hearing the parties and considering the evidence filed before it dismissed the complaint by concluding that in spite of best efforts and treatment by a team of competent doctors, the patient could not be saved and that the Appellant had not been able to adduce any evidence to prove medical negligence as also deficiency in the infrastructure of the Respondent No.1/Hospital. State Commission further concluded that even if negligence was proved in this case, Appellant on her re-marriage was legally not entitled to any relief since she ceased to be the legal representative of her deceased husband. Hence, the present First Appeal.

Counsel for both parties made oral submissions. Counsel for the Respondent at the outset stated that he cannot support the finding recorded by the State Commission that because Appellant had re-married, she was no longer the legal representative of her deceased husband. In view of the concession made by Counsel for Respondent, the finding of the State Commission that the complaint filed by the Appellant was not maintainable as she was no longer the legal representative of her deceased husband is set aside. Now, the only question which remains to be decided is whether there was any medical negligence in this case. Counsel for Appellant reiterated that as submitted before the State Commission there was adequate evidence that even after the patient was

admitted in the Respondent No.1/Hospital and his condition continued to deteriorate throughout the day, no senior doctor attended to him despite several requests by his relatives to do so. Respondent No.2, Dr.Channaraya who had seen him in the morning at the time of his admission came only after 4.30 pm by which time the patient ''s condition was critical. In fact, this casual and callous attitude was evident throughout the treatment and medical care of the patient and this fact has been confirmed by the evidence of a medical expert, Dr.Kiran who had stated on oath before the State Commission that after seeing the medical records, the patient appeared to be suffering from pancreatis and Respondents by administering crocin/paracetamol had given a drug that was contra-indicated in such conditions, particularly when the temperature recorded at that time was normal. Counsel for Appellant stated that even from the affidavit of Respondent No.2., Dr.Channaraya, the medical negligence in dealing with this case is writ large since it was admitted that as per records the blood and urine had not been sent for investigation and that Respondent No.2 had seen the patient at the time of admission and thereafter only after 4.00 pm since he was busy in a meeting. Unfortunately, State Commission did not take these facts into consideration while concluding that there was no medical negligence in this case. Counsel for Respondents on the other hand stated that if the patient had not got confidence in Respondent No.1/Hospital, he would not have sought treatment from its doctors by visiting it each time he was ill. Further, it is a fact that he was prescribed correct and proper medicines and also subjected to the required diagnostic tests. On 20.07.1993, on the basis of detailed clinical examination which indicated that he had enteric fever with acute gastroenteritis, patient was immediately admitted to the hospital and intensive treatment started. While, it may be a fact that Respondent No.2, Dr.Channaraya saw the patient only in the afternoon, it is not factually correct that he was not attended to by other doctors during this period. In fact, as per the case history, his condition was regularly monitored, he was put on a drip and after the blood test reports were available in the afternoon, Dr.Channaraya immediately saw the patient and all efforts were made to save his life. It was denied that Respondents advised that patient be shifted to Manipal Nursing Home or that the driver of the ambulance was not available. The Enquiry Committee set-up to look into the complaint made by the Appellant was fair and rightly concluded that no case of medical negligence was made out. The evidence of Dr.Kiran on whom the Appellant has relied lacks credibility since he was a forensic expert and never attended to the patient. Even the affidavit given by him before the State Commission is full of contradictions including his statement that paracetamol was not required. Medication was prescribed after carefully considering all aspects of the case and as per the best professional judgment of the Respondents/doctors. The State Commission after examining all these facts had rightly concluded that there was no evidence of medical negligence and deficiency in service on the part of the Respondents.

3. WE have considered the submissions made by the learned Counsel for both

parties and have gone through the evidence on record. WE note from the documentary evidence on file that each time the patient had visited the Respondent No.1/Hospital, he had been attended to by qualified doctors and asked to undergo both clinical and diagnostic tests and was also prescribed medicines. When his condition did not improve and a diagnosis of enteric fever and gastroenteritis was made, he was immediately admitted as an in-patient and we note from the case history that right from the time of admission till his death, his medical condition was regularly monitored, the details of his blood pressure etc. noted down and necessary medical intervention made wherever required. This clearly does not support the contention of the Appellant that the patient was not attended to by any doctor or paramedical staff properly till after 4.30 pm and therefore, he died because of negligence in treating him at the appropriate time. WE also agree that the evidence of Dr.Kiran does not inspire much confidence and his statements of a general nature were based on the papers supplied to him by the Appellant. His contention that Crocin is contra-indicated and should not have been given if there was no fever has not been supported by medical literature on the subject. Paracetamol can be administered under medical supervision for a number of reasons including for severe body ache from which the patient admittedly suffered. Appellant has not been able to produce any other evidence to controvert the documentary evidence on record filed by Respondents regarding the medical care, diagnosis and treatment of the patient and we are, therefore, unable to conclude that there was any medical negligence in this case on the part of the Respondents. WE, therefore, uphold the order of the State Commission that no case of medical negligence is made out. The First Appeal is accordingly dismissed with no order as to costs.

