(2014) 02 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Shivaji Basu — APPELLANT

Vs

Devapriya Ghosh — RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 341 : 2014 1 CPJ 602

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : SRIJAN NAYAK , AMITAVA PODDAR , Jitender Mehta

Judgement

1. BOTH these appeals arise out of common order of learned State Commission; hence, decided by common order. OP/appellant filed appeal No. 222/08 against order dated 10.1.2008 passed by the West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, ''the State Commission'') in S.C. Case No. 75/0/2000 by which, complaint was partly allowed and complainant filed appeal No. 509/08 against the same order for enhancement of compensation.

2. BRIEF facts of the case are that complainant was Dy. Director General, Geological Survey of India, Govt. of India, 58 years old suffered Urinary Tract Infection and approached O.P. for treatment on 18.5.1998. O.P. No. 1 advised for certain tests and charged Rs. 200 as fees. The O.P. No. 1 prescribed him Mikacine 500 mg. injection daily for 4 days along with other medicines. He further advised to carry out certain other pathological tests, X -ray and ECG reports. Accordingly, the complainant met him at his chamber on 27.5.1998. The O.P. No. 1 also advised him Trance Urethral Resection (TUR) of Prostate. He also advised surgical operation at Samaritan Clinic, 10/4D Elgin Road, Kolkata. An amount of Rs. 20,000 was paid to WOCKHARDT Medical Centre for the above purpose and operation was conducted on 10.6.1998 at Samaritan Clinic. He was in the nursing home from 9.6.1998 to 16.6.1998 and was discharged thereafter. The complainant also paid Rs. 5,923 to meet the nursing home bill. The O.P. No. 1 gave him medical advice and he also asked him to report to him for further examination after 4 weeks. The complainant had prepared the pathological/USG reports as advised by O.P. No. 1 and met him in his chamber on 17.7.1998. The

O.P. No. 1 after examining the Complainant contended that while prescribing Martidox the O.P. No. 1 failed to consult the relevant test report which corroborated that the patient was resisted to Martidox. When pointed out the O.P. No. 1 changed Martidox to Mikacin Injection 500 mg. @ 2 ampoules daily for 5 days. The complainant stated that Mikacin is aminoglycoside Antibiotics. The complainant was administered 10 ampoules of Mikacin 500 mg. The complainant contended that he started feeling some audibility problem thereafter. He contended that injection Mikacin is harmful to patients having serum creatinine level 3.5 mg./100 ml. and above which is the tested level in case of the complainant. He further contended that the actual recommended doses for a patient having the said creatinine level should be 250 mg. daily whereas he was administered 500 mg. injection Mikacine for 4 days initially and again twice daily for 5 days which was overdose. He also contended that he had renal ailments and so O.P. No. 1 had to be specially careful while prescribing Mikacine 500 mg. injection. He stated that this was done without considering the drug sensitivity test report. He also contended that while he prescribed Mikacine injection 500 mg. for the complainant O.P. No. 1 who had cautioned him regarding the chance of impairing the audiosensivity of the patient, but no such caution was sounded ever by O.P. No. 1. The complainant also contended that from the prescription of O.P. No. 1 dated 10.6.1998 it would be evident that he prescribed 6 vials of Gentamycine injection of the same Group (Aminoglycoside) for the complainant. He further stated that he reported to the O.P. No. 1 on 17.7.1998 with prescribed test reports. His serum creatinine level was 2.1 mg./100 ml. This was an overdose and a careless action on the part of the O.P. No. 1 as he is a known patient of renal ailment which was also treated by O.P. No. 1. The complainant further contended that due to such careless prescription of Amino glycoside Antibiotic successively, his Audiosensivity was seriously impaired. It was further alleged that he consulted Dr. P.P. Ghosh and Dr. S.P. De who confirmed that hearing capacity had been impaired and advised some medicines. He further alleged that he was earning Rs. 15,000 per month by participating in various seminars and workshops as a specialist and on account of impairment of his audibility, he stands to lose about Rs. 12,00,000 for the remaining years of his life. Alleging deficiency on the part of OPs filed complaint before State Commission. O.P. No. 1 resisted complaint and submitted that dispute filed before the Commission was complicated in nature involving medical negligence of highly technical nature and was not desirable for the Commission to adjudicate the matter in a summary trial process. It was further submitted that complaint was bad for non -joinder of necessary parties, other doctors who treated the complainant. He further contended that on examination of the complainant he found no adverse symptom and no sign of infection when he first consulted him and accordingly, he prescribed Martidox which was considered to be a safe medicine. The cultural sensitivity report of the complainant dated 11.7.1998 indicated that the complainant was highly sensitive to Amicacin and resistant to all other antibiotic. He denied that he had neglected to examine the test reports. He prescribed Mikacine considering the sign of infection and to prevent the life

threatening situation. He strongly denied that he had prescribed Mikacine in overdose. The said injection in fact, improved the condition of the patient permitting the operation performed on the complainant thereafter. The blood urea came down from 66 to 50 and creatinine from 3.5 to 2.7 mg. percent. He emphasized that the said medicine was applied to save life of the patient and he had to overlook the adverse effect of the medicine on the complainant regarding prescribing Gentamycine injection. He stated that it was merely a requisition and the actual dose was indicated in the bed head ticket of the complainant. He strongly denied that he had caused permanent damage to the complainant hearing and prayed for dismissal of complaint.

3. COMPLAINANT filed rejoinder and submitted that O.P. had full knowledge of the infection as it would be evident from the pathological report dated 11.7.1998.Hestrongly denied that the O.P. had asked for another urine test report on 17.7.1998 after examination of the test report dated 11.7.1998 as the prescription of the O.P. does not contain any such advice. He contended that the O.P. was negligent in prescribing Mikacine in overdose without cautioning the complainant. As prescribing Doctor he was duty bound to advise the complainant about its adverse effects. He further denied that there was life threatening situation at any point of time, during the period he remained under treatment of O.P. No. 1.

4. LEARNED State Commission after hearing both the parties allowed complaint partly against O.P. No. 1 and directed him to pay Rs. 2,00,000 as compensation and further awarded Rs. 3,000 as litigation cost. Heard learned Counsel for the parties and perused record.

5. LEARNED Counsel for the O.P. submitted that learned State Commission rightly arrived to the conclusion that there was no deficiency in regard to the medicine administered to the complainant, but committed error in granting compensation without any report to the fact that permanent injury to the auditory system of complainant has been caused; hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the complainant/petitioner submitted that learned State Commission has committed error in allowing meagre compensation, whereas claimed compensation should have been allowed; hence, revision petition be allowed and compensation be enhanced.

6. IT is not disputed that O.P. No. 1 treated complainant and prescribed dose, as mentioned in the complaint. Perusal of record clearly reveals that complainant has not adduced any expert evidence except his own statement and O.P. has adduced evidence of two experts. Both the experts have held that it could not be said that Mikacine prescribed by O.P. was an overdose as a consequence of which audibility of the complainant had been impaired.

7. LEARNED State Commission after elaborate discussion rightly observed in paragraph 16 as under: We are inclined to observe that while application of

Mikacine has been recommended as a lifesaving drug caution has been sounded by almost each and every author of repute of the various Medical Titles as cited above regarding its post application damage to the human audiology system unless carefully monitored and with a view to arresting such damage regular monitoring and test of audiotoxicity has been strongly advised in all medical titles. So far as the dose is concerned we find that Dr. Ghosh of AIIMS in the above quoted judgment stated that daily dose of 1.5 mg. per day may be prescribed to an adult patient. However, he did not say anywhere as to whether this dose was applicable in all cases irrespective of the difference increatinine level and also for aging patients having renal problems. There is no denying the fact that in the present case there is no expert evidence filed by the complainant to show that the medicine Mikacin has caused damage to the auditory system of the complainant though the autotoxicity was noticed almost immediately (about one month) after the 10 Mikacin injections were administered. The ENT experts who were consulted by the complainant diagnosed that his hearing problem had been impaired beyond recovery and they advised for using hearing aid. This was in the aftermath of administration of Mikacin injection. In view of the expert opinion adduced before the Hon''ble National Commission in I (2003) CPJ 116 (NC) and the excerpts adduced from various medical text books we are of the view that we have not found any unanimity of opinion even among the experts as to whether the dose advised by the O.P. No. 1 for the complainant (Mikacin 500) was an overdose (the expert opinion of Dr. Ghosh of AIIMS and also that of Dr. Shareen may be recalled). Accordingly, we are of view that the complainant has failed to prove that the O.P. No. 1 had prescribed Mikacin 500 in overdose and as such, allegation regarding negligence so far as the dose is concerned remains unsubstantiated.

8. LEARNED Counsel for the complainant has drawn our attention to cross - examination of Dr. Santanu Banerjee in which he replied that 750 mgm./day should be daily dose of Amikacin of a patient of 60 kgs. without renal impairment. Learned Counsel for the complainant submitted that as complainant was having renal impairment, dose of 500 mgm. twice for 4 -5 days was certainly an excessive dose. We do not agree with the submission of learned Counsel for the complainant because nowhere O.P. No. 1 admitted that complainant was having renal impairment. In paragraph 17 of the complaint, complainant mentioned about the fact that O.P. No. 1 was knowing fully well about renal ailment of the complainant, but O.P. No. 1 in his written statement denied this fact. Complainant has not adduced any evidence in support of his contention that O.P. No. 1 was aware about the renal ailment of the complainant and in such circumstances, doses of Amikacin prescribed by O.P. No. 1 cannot be said to be overdose and we agree with the view taken by learned State Commission. Even if it is presumed that dose prescribed by O.P. No. 1 was overdose, whether it had any impact of hearing on the complainant, learned Counsel for the O.P. No. 1 submitted that complainant has not filed any expert opinion or report to prove the fact that so -called overdose of Amikacin affected

hearing of complainant. To prove this fact complainant ought to have produced earlier audiography report and after treatment latest audiography report to arrive at a conclusion that due to impact of Amikacin, complainant''s hearing was impaired. Complainant mentioned in the complaint that he consulted Dr. S.P. Ghosh and Dr. S.P. De who confirmed that hearing capacity had been impaired due to the treatment but neither the witnesses have been examined by the complainant before State Commission, nor their report has been placed on record. In the absence of any material on record and auditory report before or after treatment, it cannot be concluded that complainant''s treatment by Amikacin impaired his hearing.

9. LEARNED State Commission rightly observed that O.P. No. 1 failed to caution complainant regarding the damaging effect of medicine in its post application period and awarded compensation only on this count. As observed by us, there was neither any deficiency on the part of O.P. No. 1 in prescribing medicine, nor there was any report to conclude that hearing of complainant was affected due to dose prescribed by O.P. No. 1 merely because O.P. No. 1 had not cautioned the complainant regarding impact of Amikacin dose, no deficiency can be attributed on the part of O.P. No. 1 and learned State Commission has committed error in granting compensation of Rs. 2,00,000 and in such circumstances, Appeal No. 222/08 filed by the O.P. No. 1 is to be allowed.

10. AS Appeal No. 222/08 has been allowed and impugned order is to be set aside, Appeal No. 509/08 filed by the complainant for enhancement of compensation stands dismissed. Consequently, Appeal No. 222/08 filed by the Appellant/O.P. No. 1 is allowed and impugned order dated 10.1.2008 passed by learned State Commission in Complaint Case No. 75/O/2000 is set aside and complaint stands dismissed. Appeal No. 509/08 filed the complainant for enhancement of compensation stands dismissed.

