

(2011) 09 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

SHRAWAN KUMAR

APPELLANT

Vs

SIR GANGA RAM HOSPITAL , Dr. M.P. Gupta

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 634 : 2011 4 CPJ 315 : 2011 4 CPR 172

Hon'ble Judges : V.R.KINGAONKAR , VINAY KUMAR J.

Advocate : VINOD KUMAR , H.L.Rami

Judgement

1. THIS appeal arises out of the judgement and order rendered by the State Consumer Disputes Redressal Commission, Delhi (in short "the State Commission"), in complaint bearing No. C -199/1993, whereby the complaint filed by the present appellant came to be dismissed.

2. IT is undisputed that wife of the appellant, namely, Archana Vigmal was required to undergo surgical intervention for replacement of one valve of the heart prior to about 3 years of her death in Apollo Hospital, Madras. She was advised to avoid pregnancy. Since November, 1991, she was being treated by original OP No. 2 " Dr. M.P. Gupta (since deceased). He had advised injection of Heparin 10,000 S/C daily along with half tab. of Anoxin per day. There is no dispute about the fact that she was advised P.T.T. test (Prothrombine Time Test) at regular intervals in order to adjust the dose of Heparin. In plain terms, the anticoagulant drug was being administered to her in order to ensure regular flow of the blood to regulate functioning of the heart. Briefly stated, the complainant's case is that original OP No. 2 "Dr. Gupta was well aware of the precarious conditions of the patient (Mrs. Archana Vigmal). He ought to have monitored appropriate dose of injectable Heparin after conducting the P.T.T Tests after regular intervals. Still, however, Dr. Gupta failed to duly monitor the dose of Heparin injection in accordance with P.T.T. tests nor such test was carried out. The absence of prescribing the Heparin dose without verification of the result of P.T.T. Test was the carelessness and negligence on the part of Dr. Gupta (Original OP No.2).

3. THE complainant alleged that his wife (Mrs. Archana Vigmal) was a young woman and was pregnant at the relevant time. She had no serious medical problem, but due to carelessness and administration of the inadequate quantity of the anticoagulant drug, a clot was formed in her heart valve on 27.3.1992. It was noticed that she was gasping and was having trouble in breathing. She was also vomiting and as such, was rushed to Sir Ganga Ram Hospital (Original OP No.1). Though, she was admitted at 6 a.m., yet, she was not treated by the Internal Coronary Care Unit till 10.30 a.m. She suffered agony and pains due to negligence of the treating doctors. Ultimately, she died on 28.3.1992 at 8.45 a.m. She used to earn more than Rs.2500/ - p.m.

4. WE need not reproduce the version of original OP No. 2 "Dr. Gupta that was in his defence. For, during pendency of the appeal, he died and is no more the contesting party in this appeal. However, it may mentioned that in his opinion, the Gynaecologist had advised her to discontinue pregnancy because she was a heart patient and had already undergone replacement of one valve of the heart prior to about 3 years. He contended that against the medical advice, she had conceived and continued pregnancy. It was his case that the P.T.T. test was not advisable for her due to the pregnancy. It was further his case that on 26.3.2002, she had failed to take the dose of anticoagulant injection and, therefore, suffered from the medical problem. She was, therefore, referred to Sir Ganga Ram Hospital for management of the heart problem. The defence of the Sir Ganga Ram Hospital (respondent no.1) was that there was no allegation of medical negligence committed by the doctors after admission of the patient on 27.11.1991. They tried to salvage her from the loss, which had occasioned due to missing of the anticoagulant drug on the earlier day. It was submitted that the patient was under treatment of opposite party no. 2 "Dr. Gupta for all the relevant period prior to 27.11.1991. The patient was resuscitated and thrombolytic therapy was given in order to save her life. It was stated that in spite of best efforts, the life could not be saved due to the complications, which had occurred before admission of the patient in Sir Ganga Ram Hospital.

5. CONSIDERING the material on record and having regard to the rival submissions, the State Commission held that the deceased patient had continued with the pregnancy, knowing the risk involved. The State Commission further held that the deceased patient had not adhered to the advice of the doctor of Apollo Hospital, Madras. The deceased was OPD patient of Batra Hospital during the relevant period. The State Commission held that services of the respondent no. 1(o.p.no.1) were not availed because she was referred by the o.p. no. 2. for management of the heart problem. Moreover, there was no medical negligence committed by the treating doctors of the opposite party no. 1 and as such, the complaint was dismissed.

6. WE have heard learned counsel for the parties. It may be stated that Mr. Vinod Kumar was appointed as Amicus Curiae to assist this Commission for and on behalf of the appellant. He submitted that the medical treatment papers were not

placed on record by o.p. no. 1 "Dr. Gupta (since deceased) and, therefore, it was difficult to assume that dose of Heparin injection was proper and adequate. He argued that that the deceased was being administered inadequate dose of anticoagulant drug without conducting the P.T.T. test. He submitted that thrombolytic therapy is most essential to avoid risk factor in case of a pregnant woman who had undergone replacement of one valve of the heart. He further submitted that the failure of the doctors of Sir Ganga Ram Hospital to take immediate steps also contributed to further prognosis and, therefore, the case of medical negligence is duly proved against the respondents. He submitted that the complaint should have been allowed and the appellant deserves to be compensated. Per contra, learned counsel for the respondent no.1 (o.p. no. 1) supported the impugned judgement. He pointed out that the entire gamut and averment in the complaint would show that the medical negligence was attributed to original o.p.no. 2 "Dr. Gupta and not to any doctor of Sir Ganga Ram Hospital. We have gone through the medical record and the relevant aspects of the matter. On perusal of the complaint filed by the appellant, it is amply clear that the allegations of medical negligence were levelled against o.p. no. 2 "Dr. Gupta on the ground that he had not conducted P.T.T. test which was essential for the purpose of monitoring dose of the anticoagulant drug. The averments in para 7 of the complaint go to show that the dose of anticoagulant injection was inadequate and, therefore, the patient suffered breathlessness in the morning of 27.3.1992. It is also amply clear that she was admitted in the hospital of o.p. no. 1 on basis of advice of the o.p. no. 2 i.e. Dr. Gupta. The only allegation against the o.p. no. 1 is that the patient was not immediately rushed to the Internal Coronary Care Unit and at about 10.30 a.m., the doctors decided to shift her in the said unit due to medical complications.

7. SO far as the case against o.p. no. 2 " Dr. Gupta is concerned, it is not necessary to determine whether he was negligent on account of non -conduction of P.T.T. test and further on account of administering inadequate quantity of the anticoagulant injection. Still, however, one cannot overlook the fact that since prior to the pregnancy, the patient was advised to avoid the pregnancy due to the medical complications expected to arise in view of the surgery, which she had undergone. It further appears that she was being treated by the deceased "Dr. Gupta since much prior to her admission in the hospital of o.p. no. 1. She was never treated by the o.p. no. 1 hospital before morning of 27.3.1992. It appears that since September,1991, till by the end of March, 1992, she was under the treatment of Dr. Gupta and was OPD patient of Batra Hospital. Obviously, o.p. no. 1 "Sir Ganga Ram Hospital was unconcerned with the earlier treatment given to her. What appears from the medical record is that though she was suffering from heart problem, yet, the couple decided to continue to pregnancy. Be that as it may, it is difficult to hold that the patient was under treatment of the o.p. no. 1 for management of the heart problem or the Gynaecological problems before she was admitted in Sir Ganga Ram Hospital on 27.3.1992.

8. FOR the sake of arguments, even if it is presumed that o.p. no. 2 "Dr. Gupta

was negligent on account of failure to conduct P.T.T. test and due to administration of inadequate dose of anticoagulant drug, yet, the cause of action against him does not survive any more. Since, the complaint was dismissed by the State Commission, no actionable claim could have survived against him after his death during pendency of the present appeal. The legal principle "Actio Personalis Moritur Cum Persona" is clearly applicable to the fact situation of the present case. In *Balbir Singh Makol Vs. Chairman, M/s. Sir Ganga Ram Hospital and Ors.* "I (2001) CPJ 45 (NC), this Commission held that after death of the doctor, his liability for damages stood extinguished. It has been observed that legal heirs of the deceased doctor also could not be taken on record. In this view of the matter, the appeal stands abated against o.p. no. 2 (Dr. Gupta). We have carefully examined the relevant medical papers and the nature of averments made against the respondent no.1. In our opinion, the deceased patient was rushed to the hospital of the respondent no.1 at the critical moment when she was already suffering from breathlessness. It further appears that medical treatment was given to her for vomiting and failure to take anticoagulant injection on the earlier day. It is pertinent to note that the medical history was recorded at 6.45 a.m. on 27.1.1992 at Sir Ganga Ram Hospital, New Delhi as below: "S/B Dr. Abha P.R. Feeble 110/Min BP 100/70 of Hg. Pt Cold + Pale Dyspnoic Resp. Rate 30/Min. Not Comfortable while lying down Lung Bases clean. Missed Her Heparin Dose Yesterday + Digoxin Adv. - Cardiology Reference - To be given the missed dose of Heparin and Digoxin after the medical register has seen her."

9. THE relevant medical record goes to show that the patient was immediately attended and necessary procedure was undertaken to save her life. We do not find any substance in the contention that there was negligence committed by the doctors while treating and attending the deceased wife of the appellant at Sir Ganga Ram Hospital. Nobody can deny that the death of such a young woman was unfortunate. At the same time, it is difficult to say that the death could be attributed to any kind of negligence on part of the o.p. no. 2 (respondent no.1) It also may be mentioned that the appellant did not examine any medical expert in support of the allegation about medical negligence. Obviously, one does not find any support to the contention that the P.T.T. test was essential, though, the deceased was a pregnant woman and, though, there was no problems suffered by her with the dose of such anticoagulant drug that was being administered before 26.3.1992. Needless to say, the appellant failed to prove his case against the o.p. no. 1/respondent no.1 and as such, dismissal of the complaint by the State Commission cannot be faulted with.

10. IN the result, we do not find any merit in the appeal. Hence, it is dismissed. No costs.