

(2002) 07 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

SIDHARTH BATTÀ

APPELLANT

Vs

MAJ.GEN.M.L.MAGOTRA

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Citation : 2003 0 KASHLJ 165 : 2003 3 CLT 504 : 2003 4 CPJ 182 : 2003 SUPP JKJ 499

Hon'ble Judges : T.S.Doabia , Sudesh Kumar Gupta J.

Final Decision : Appeal dismissed

Judgement

1. THE State Commission has negated the claim of the appellant. It has been observed that this is not a case where respondent doctor was negligent in administering the medicine. THE complainant remains unsatisfied; he has preferred this appeal.

2. IT is not in dispute that Sidharth Batta who filed a complaint through his father and who has again filed the present appeal through him was born on 18th September, 1988. He had medical problems from day one. He suffered from Jaundice. He was also suffering from acute diarrhoea. He was given Gentamycin and some other medicines also on 19th May, 1989. IT was alleged that because of administration of this drug, the child became deaf. This was detected when audiogram test was conducted. This was done on 17th November, 1989. The appellant was taken to the Government Hospital at Ludhiana. He was taken to other Hospitals also. Ultimately, the opinion expressed is that the appellant is permanently deaf. It is the case of the appellant that it was on account of administration of drug namely Gentamycin, the child came to suffer from permanent deafness. The evidence which came on the record has been minutely taken note of by the State Commission. It was accordingly observed that there is no definite evidence which can establish the fact that deafness from which the appellant came to suffer was caused by Gentamycin injunction. It is this finding which is being called in question. The evidence which has come on the record be noticed.

Dr. Mohan Lal, who is an Assistant Surgeon, stated that the deafness from which the appellant is suffering is a congenital defect. Dr. Anil Suri, another Assistant Surgeon stated that whatever he had mentioned in the certificate was not on the basis of personal observations. Dr. Javed Choudhary, admitted that Gentamycin can be administered to a child suffering from Diarrhoea and indicated that the dose would depend upon the weight of the child. He stated that the dose which was prescribed by the respondent was within the permissible limit. The question arises as to whether the deafness from which the appellant came to suffer was congenital or this occurred on account of excess injection of Gentamycin.

3. DR. Mohan Lal has stated in categorical terms that the appellant is suffering from deafness which is congenital in nature. DR. Javed Choudhary has given an opinion that Gentamycin can be given to a child suffering from Diarrhoea and has further opined that the dose which was prescribed was within permissible limit. If this be the position, then what is said by the Supreme Court in the case of Smt. Vinitha Ashok v. Lakshmi Hospital, VI (2000) SLT 735=(2001) 8 SCC 731, would be attracted. It was observed that a doctor would not be guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art and if he has acted in accordance with such practice then merely because there is a body of opinion that takes a contrary view will not make him liable for negligence. In the above case complainant Vinitha Ashok had a cervical pregnancy. This is a rare and complicated condition and could be discovered during the dilation and curettage (D&C) procedure or a procedure for MTP (Medical Termination of Pregnancy). The doctors performed hysterectomy (removal of uterus). It was held that this is a practice which was commonly followed in the State of Kerala and under the circumstances, a finding could not be recorded that the doctors were negligent. In the present case, the medical opinion which has come on the record is that Gentamycin could be given to a child and it has been further stated that the same has been given under permissible limits. If above be the situation, then, it is difficult to record a finding that the respondent doctor was negligent. This appeal as such is found to be without merit and is dismissed. Appeal dismissed.