
(2002) 07 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : CIMA No. 55/99

Sidharth Batta

APPELLANT

Vs

M.L.Magotra, Maj.Gen.(Rtd.)

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 17

Citation : (2003) JKJ 499 : (2002) KashLJ 165

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : U.K.Jalali, S.C.Gupta, Advocates appearing for the Parties

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 Sidharath Batta who filed a complaint through his father and who has again filed the present appeal through him was born

on 18th Sept' 88. 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 18th May'89. 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 Nov' 89. 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.

3. It is the case of the appellant that it was a 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.

4. The evidence which has come on the record be noticed.

5. 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 which was prescribed by

the respondent was within the permissible limit.

6. The question arises as to whether the deafness from which the appellant came to suffer was congenital or this occurred on account of excess

injunction of Gentamycin.

7. 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 Vinitha Ashok vs. Lakshmi Hospital and

ors., (2001)8 SCC

7M would be attracted, It was observed that a doctor would not be guilty 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 Vinatha 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). 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. 8. This appeal as such is found to be without merit and is dismissed.