

(2007) 05 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

SNEHLATA

APPELLANT

Vs

RATAN JYOTI NETRALAYA

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Citation : 2007 2 CPR 451 : 2007 3 CPJ 275 : 2007 4 UC 210

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition dismissed

Judgement

1. -CASE of the complainant No. 1 Smt. Snehlata Gupta is that she had developed Glaucoma in her eyes. Dr. H.S. Sharma of Government Hospital, Morena advised surgery. The complainant No.1 contacted Dr. Purendra Bhasin and Dr. Smt. Priyamvada Bhasin of Ratan Jyoti Netralaya, Gwalior on 15.4.1999 who operated her left eye on 17.4.1999. Complainant No. 1 alleged that when the bandage was removed she had lost her vision. Surgery of the right eye was performed on 23.4.1999 and on 24.4.1999 when bandage was removed she found that she lost her eyesight of the right eye also. It is alleged by the complainant No. 1 that the treating doctor had promised that her vision will improve after the surgery but he has not taken proper care in operating her eye. There was also no improvement despite the use of medicines suggested by the treating doctor. Subsequently, the complainant consulted doctors at Aligarh and Agra who stated after examination that the chambers of both the eyes are blocked. The complainant No. 1 went to the same doctor at Gwalior who advised her Cataract operation Accordingly, intraocular lens were implanted in her eyes on 30.7.1999 and 16.8.1999 respectively. Even with this, the complainants contended that there was no improvement in the vision and the complainant No. 1 lost her eyesight. Dr. Bhasin gave a reference letter to Dr. Rajendra Prasad Centre for Ophthalmic Science (AIIMS). Even after the treatment at this centre the complainant No. 1 could not regain her vision. She alleged that surgery performed by the respondent doctors was a failure and they have committed grave medical negligence.

2. THE District Forum after hearing the parties and the evidence adduced by the parties came to the conclusion that the doctors have tried their level best to operate and manage the Glaucoma and Cataract of the appellant hence, medical negligence was not proved. THE State Commission confirmed the order of the District Forum. Hence the revision. We had appointed an amicus curiae who assisted the revision petitioner. Submissions of the learned Counsel for the Revision Petitioners :

The learned amicus curiae argued that Glaucoma is an irreversible disease wherein free flowing fluid in the eyes get blocked, impairing vision. Surgery can only stop further loss of vision but it cannot correct or improve the vision. The report of the AIIMS says "failed trab" which does not mean failed surgery. Hence, there appears to be no medical negligence though there is no improvement in the eyesight after surgery. Submissions of the learned Counsel for the Respondent :

3. LEARNED Counsel for the respondent No.1 submitted that there are large number of Glaucoma patients in and around Gwalior and the doctor who performed surgery has vast experience in the field. The consent was given by the patient and her husband for the surgery. Glaucoma is irreversible and surgery is meant only to manage and retain the vision. Though the complainants claimed that they have no confidence in the doctor who treated her for Glaucoma but still they went to the same doctor for cataract surgery. The record of AIIMS show that there was no diminution in eyesight. They quoted in extenso the judgment of the Apex Court in Jacob Mathew v. State of Punjab and Anr., III (2005) CPJ 9 (SC)=III (2005) CCR 9 (SC)=VI (2005) SLT 1=122 (2005) DLT 83 (SC)=(2005) 6 SCC 1. Findings :

4. GLAUCOMA has been defined as "a term signifying increased intra-ocular pressure and its consequences." Absolute GLAUCOMA is defined as "the end-result of untreated glaucoma, the eye being completely blind." We do not have any record to show that the treating doctors have promised her improvement of the eyesight after the surgery. Neither there is a proof to show that there was deterioration in the eyesight after the surgery. However, treatment is required to manage the Glaucoma. The medical literature produced before us states that Glaucoma is a leading cause of irreversible blindness throughout the world. A perusal of the records shows that the respondent doctors have adequate qualifications to treat the patients suffering from the problems relating to the eyes. Hospital records produced before us show that they have taken pains to handle the case carefully. We failed to understand that if the patient felt that she became blind after the surgery of one eye for treatment of Glaucoma, why did she go again to the same hospital and the same doctors for surgery of second eye and why did the patient go to the same doctors for treatment of Cataract? We baffled. Further, if they are not interested in curing the patient why did the doctors refer her to Dr. Rajendra Prasad Centre for Ophthalmic Science (AIIMS) for better management?

5. THE learned Amicus has clarified that the words used in the record of AIIMS i.e. "failed trab" does not mean the surgery had failed. This was further clarified by the learned Counsel for the respondent No. 1 that AIIMS record does not show that there is deterioration of eyesight.

6. THE Supreme Court in Jacob Mathew case has reiterated the importance of the Bolam test. "THE degree of skill and care required by a medical practitioner is so stated in Halsbury's Laws of England (4th Edn. Vol. 30 para 35) : 35. THE practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men."

Accordingly, we do not find any material irregularity or jurisdictional illegality in the order passed by the State Commission necessitating our interference. The revision petition is dismissed. There shall be no order as to costs. Revision Petition dismissed.