(2013) 08 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

St. Stephens Hospital — APPELLANT

Vs

ROSHANI DEVI — RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 582 : 2013 4 CPJ 74

Hon'ble Judges : VINEETA RAI , VINAY KUMAR J.

Advocate : RAJEEV SHARMA , SAHIL BHALAIK , ARUNA MEHTA

Judgement

1. FIRST Appeal No. 411 of 2007 has been filed by St. Stephens Hospital being aggrieved by the order of the State Commission, which had allowed the complaint of medical negligence alleged by Smt. Roshani Devi, complainant before the State Commission and respondent herein. A cross appeal (First Appeal No. 488 of 2007) in the same matter has been filed by respondent/complainant, seeking enhancement of the compensation awarded by the State Commission. Since the cause of action and the parties involved are common in both the cases, we propose to dispose of both appeals through a single order by taking the facts from First Appeal No. 411 of 2007.

2. IN her complaint before the State Commission, Complainant/respondent-Smt. Roshani Devi contended that her late husband (hereinafter referred to as ''patient ''), who had been suffering from intermittent fever from 12.02.1996 and which could not be cured in Rohtak, was admitted to appellant hospital on 22.02.1996. He was discharged on 26.02.1996 with the remark that the patient had "improved " and required treatment as an outdoor patient, whereas the patient was in a very critical condition when he was discharged with platelet counts which had dropped to even more critical levels from 19,000 to 16000 cumm; whereas the normal count is between 1,50000 to 4,50000 cumm. It was stated that although the concerned Doctors of Appellant Hospital had clearly recorded that liver abscess was suspected but no tests were conducted to confirm the same or to diagnose the cause of the very low platelets counts (Thrombocytopania). In fact throughout the period of the stay of the patient in

Appellant Hospital, only empirical treatment to deal with the overt symptomatic conditions like fever, pain and nausea were given such as Combiflame, Lariago and Perinorm. Some of these medicines are contraindicated as being toxic in respect of liver complaints. The same night, following the discharge, patient ''s s condition further deteriorated and bleeding started from his nails, gums and nose. He was rushed to AIIMS but could not be admitted there due to non-availability of a bed. He was thereafter admitted to Holy Family Hospital on 27.02.1996. Although, a correct diagnosis was made there and treatment started but, because of the medical negligence on the part of appellant No.1 in not correctly diagnosing and treating the patient, his life could not be saved and he passed away on 11.03.1996.

3. BEING aggrieved by the deficiency in service and medical negligence on the part of the appellant hospital because of which a young man of 32 years who was working as a school teacher on a monthly salary of Rs. 5,000/- (and which would have substantially increased over the years), expenditure of over Rs. 1,20,000/- spent on his treatment and also the acute mental agony and invaluable loss caused to Respondent and her young children, Respondent filed a complaint before the State Commission requesting that the Appellant-Hospital be directed to pay the Respondent following: JUDGEMENT_582_NCDRC_2013.htm

4. THE contentions of the respondent were denied by the Appellant-Hospital in its written rejoinder who inter-alia took the following plea: "(i) A Doctor can be said to be guilty of negligence only if he commits such an error which no doctor of reasonable competence will commit. A doctor cannot make a final diagnosis straightway and any diagnosis that is made by a doctor is always to an extent prima facie; (ii) All the test reports of patient turned out to be normal except his platelets count which was low. Low platelets count is commonly found in blood examination of patients of malaria. After treatment for Malaria the patient ''s fever settled and he felt better; (iii) There were no symptoms indicating jaundice. Normally diagnosis of jaundice is made on the basis of yellowing of the skin, itching and mental indentation (confusion). Though, the OPD doctor had suspected liver abscess, however, after admission and examination by the Consultant, it was found that the patient was suffering from malaria fever and treatment for the same was started; (iv) Patient was properly taken care for and treated as per medical practice and procedure. At the time he was discharged from the hospital he was not in a serious or a life threatening condition. The doctors at the hospital never suspected liver abscess; (v) The complainant was wrong in assuming that platelet count of 19000 is indicative of critical condition. This view is not supported by medical literature ".

The State Commission after hearing the parties and on the basis of evidence adduced before it, allowed the complaint by observing as follows: "As is apparent from the aforesaid medical literature the normal human body has 1.5 lakh to 4.5 lakhs platelets per cu. Milliliter of blood and if as many count above 1,00,000 per cub. Mil. Patients are not symptomatic and the bleeding time remains normal.

Patients with a platelets count below 20,000 per cub. Millimeters have an appreciable incidence of spontaneous bleeding, usually have petechiae and may have intracranial or other spontaneous internal bleeding. In the instant case patients was having platelets of 16,000 at the time of discharge still his condition was shown as normal whereas at the time of admission he was having 19,000 count. Patient with such low count platelets needs hospitalization and proper management as such a count has potential instance of spontaneous bleeding which usually have petechiae and may have intracranial or other spontaneous internal bleeding. "

5. THE State Commission directed the Appellant-Hospital to pay Rs. 5,00,000/- to the Respondent-Complainant as against Rs.15,00,000/- sought by her by observing as follows: "Taking over all view of the matter, the age of the patient as well as the profession and his earnings, the legal heirs left by him and the medical negligence on the part of OP No.1, mainly discharging the patient in such a condition which was against the medical ethic, in our view Rs. 5,00,000/- (Rupees Five Lacs) to be payable by OP No.1 Hospital would meet the ends of justice. " Hence the present cross appeals.

6. LEARNED Counsels for both parties made oral submissions. Counsel for the Appellant-Hospital reiterated the stand it took before the State Commission and vehemently argued that the State Commission erred in concluding that it was guilty of medical negligence. While agreeing that Patient had been admitted in Appellant-Hospital with a history of intermittent fever, at the time of his admission, most of his vital parameters were within normal range except for the low platelet count. Since the intermittent fever coupled with low platelet count is usually indicative of either Typhoid or Malaria, Patient was tested for the same but both blood reports were negative. However, since Malaria Parasites are often not captured in the first blood sample and the symptoms were those of Malaria, Patient was given treatment for the same. There was no symptom of Hepatitis such as yellowing of the skin, dark yellow urine, acute nausea etc. On a query by us to Counsel for the Appellant-Hospital as to how the Patient ''s diagnosis just a few days later and his subsequent death due to acute hepatic failure could be explained, he cited medical literature entitled "Fulminant Hepatic Failure " by William M. Lee and Frank Vinholt Schiodt in support, wherein it is documented that such hepatic failure can have a very rapid onset and, therefore, Counsel for Appellant-Hospital contended that Patient developed the serious liver ailment overnight and after he had been discharged from the Appellant-Hospital. To further explain why Appellant-Hospital discharged Patient with such a low platelet count and also did not give blood transfusion, Counsel for the Appellant-Hospital again relied on medical literature contained in "Guidelines for the Transfusion of Platelets " New York State Council on Human Blood and Transfusion Practices committee, New York State Department of Health, wherein it is inter alia stated "Patients with platelet counts above 5,000/uL who are not bleeding and who are otherwise stable may not require transfusion ". Thus, after carefully assessing Patient ''s condition, he was discharged as an Indoor Patient but was advised to

come for follow up check-up in OPD. Counsel for the Appellant-Hospital also cited number of judgments of Hon ''ble Supreme Court, including in Jacob Mathew V. State of Punjab And Anr. [(2005) 6 SCC 1], to assert that taking into account the principles of what constitutes medical negligence as enunciated in these cases, this was clearly not a case of medical negligence and deficiency in service since Patient was treated by highly qualified doctors in a well-reputed hospital taking all reasonable care and precaution and using their best professional judgment in carefully assessing his medical condition on the basis of clinical and pathological diagnosis/tests.

7. COUNSEL for the Respondent-Complainant on the other hand stated that the State Commission erred in concluding that there were no symptoms to indicate that Patient had liver problems. In fact, in the prescription prepared after Patient ''s examination and before admitting him in the Appellant-Hospital, it was clearly stated that the liver was perpitable and the doctor who examined him had written after due examination that the symptoms were indicative of abscess of liver and, therefore, in the column ''Advice '', Patient was advised "x-ray of the abdomen and ultrasound abdomen urgent " with instructions to admit him in the Medicine Ward. However, none of these tests, including ultrasound, were carried out to either confirm or rule out abscess of liver during the 5 days that Patient was admitted in the hospital even though a preliminary diagnosis of a major liver problem was made. In fact the very low platelet count which further fell, coupled with the preliminary diagnosis of liver, should have alerted any prudent doctor to carry out tests to rule out any problem pertaining to the liver. Counsel for the Respondent-Complainant also relied on medical literature entitled "Harrisons ''s Principles of Internal Medicine '', 12th Edition, Vol.I, which inter alia states that patients with a platelet count below 20,000 per cubic millimeter suffer from a serious medical condition and have an appreciable incidence of spontaneous bleeding. In the instant case, within few hours of his discharge from Appellant-Hospital, Patient started hemorrhaging from the gum, nose etc. At the time of discharge of the Patient from the Appellant-Hospital, it had clearly stated that Patient had Thrombocytopenia and, therefore, it was not understood how any qualified Doctor using his reasonable judgment could have concluded that Patient ''s condition had improved when in fact it had deteriorated as indicated by the falling platelet counts. Counsel for the Respondent-Complainant further brought to our notice relevant medical records maintained in Holy Family Hospital wherein it was stated that the acute hepatitis from which Patient was suffering was of 10 days duration. In view of the above facts, medical negligence was fully established as also concluded by the State Commission. However, State Commission erred in granting very low compensation of Rs.5,00,000/- whereas in such cases the compensation could have been calculated using the formula used in motor accident cases i.e. after taking into account the age of the patient, his present employment and the potential for remuneration in the future etc. and applying the relevant multiplier.

8. WE have heard learned Counsels for both parties and have also gone through

the evidence on record. The fact pertaining to Patient being admitted in Appellant-Hospital on 22.02.1996 for intermittent fever and related ailments is not in dispute. It is also an admitted fact that Patient was diagnosed with Thrombocytopenia, which is low platelet count, and to rule out that Patient was suffering from Typhoid and Malaria necessary pathological blood and vidal tests were carried out since Thrombocytopenia is a symptom common to both these diseases. Based on the symptoms present in the Patient, no test for any other disease was required. We have perused the records produced in evidence, including the medical history of the Patient in the Appellant-Hospital, and note that the above contentions of Counsel for the Appellant-Hospital are not borne out by their own documentary evidence on record before the State Commission. In fact, as also observed by the State Commission, at the time of Patient ''s admission in Appellant-Hospital it was clearly stated that his liver was perpitable with tenderness on the left side and on the basis of this observation the Doctor had suspected abscess of liver. Patient was, therefore, advised to be admitted in the Medicine Ward and x-ray and ultrasound of the abdomen were also urgently advised. Thereafter, in the column "Treatment ", the following observations were made by the concerned Doctor : "Received the patient from OPD at 1.30 P.M., Query - Acute Hepatitis .... " Thus, despite both these clear observations that acute hepatitis could not be ruled out, no diagnostic tests, ultrasound, x-ray of liver functions tests were got done. The contention of the Appellant-Hospital and its Counsel that it was not considered necessary because overt symptoms of liver abscess/jaundice were not present e.g. yellowing of the skin and nausea, does not inspire confidence because one of the symptoms of liver ailment is also low blood platelet counts. This coupled with the finding that the liver was perpitable and tender, and after Malaria and Typhoid had been clearly ruled out, any prudent Doctor would have conducted tests pertaining to the liver especially since Doctors in the same Appellant-Hospital had clearly advised the same. In support of the case that a platelet of 19,000 Cumm may not require any blood transfusion and it was under these circumstances that despite a fall in the platelet counts from 19,000 to a critical 16,000, Patient was discharged, Counsel for the Appellant-Hospital had cited medical literature. However, there is evidence, including medical literature, to the contrary as cited by Counsel for the Respondent-Complainant. The fact that Patient at the time of discharge had Thrombocytopenia is an admitted fact and in the discharge slip no mention has been made of the cause for this condition. This coupled with the fact that Thrombocytopenia had in fact got more aggravated, we are unable to comprehend the contention of Counsel for the Appellant-Hospital that Patient ''s condition had actually improved at the time of his discharge.

9. IT is an admitted fact that Patient was admitted to Holy Family Hospital following the worsening of his medical condition and with bleeding from the gum, nose etc. within hours of his discharge from the Appellant-Hospital and from a perusal of the records of this hospital, we note that after conducting tests following his admission an immediate diagnosis of Thrombocytopenia being

"Hepatitis Induced " was made and blood transfusion and necessary treatment to treat this life threatening disease started but since 5 days had been lost, Patient could not be saved. Under the circumstances, the contention of Counsel for the Appellant-Hospital that this disease as per medical literature could have developed overnight and after he had been discharged from the Hospital is totally unconvincing.

10. WHAT constitutes medical negligence is now well established through a number of judgments of this Commission as also of the Hon ''ble Supreme Court, including Jacob Mathew (supra) cited by the Counsel for the Appellant. In the same judgment what constitutes medical negligence based on the touchstone of the Bolam ''s test (Bolam Vs. Friern Hospital Management Committee (1957)1 WLR 582) has been discussed and accepted. An important principle applied is whether the doctor adopted the practice (of clinical observation diagnosis - including diagnostic tests and treatment) in the case that would be adopted by such a doctor of ordinary skill in accord with (at least) one of the responsible bodies of opinion of professional practitioners in the field. From a narration of the facts of this case, as discussed above, it is evident that neither were the required diagnostic tests nor the consequent medical treatment adopted in this case as should have been adopted by any Doctor of even ordinary skill as per standard professional management of such cases. In the instant case what is particularly unfortunate is that not even preliminary tests were conducted in respect of the Patient ''s liver even though the Doctors who examined him at the time of his admission had clearly advised the need for the same on the basis of a preliminary diagnosis of liver abscess. Therefore, we uphold the finding of the State Commission that the complaint of medical negligence against the Appellant-Hospital has been fully established. Respondent-Complainant has also filed an appeal seeking enhancement of the awarded amount of Rs.5,00,000/-. We note that State Commission had after taking an overall view of the matter awarded Rs.5,00,000/- as compensation. Keeping in view the gross medical negligence on the part of Appellant-Hospital in the treatment of the Patient which was substantially responsible for his death at the age of 32 years, the medical expenses incurred by Respondent-Complainant, the invaluable loss both financial and emotional of a spouse and father caused to Respondent No.1 and her minor children respectively and the future potential of the Patient who was gainfully employed as a teacher at the time of his death, there is scope for enhanced compensation. We are, therefore, of the view that a lump sum compensation of Rs.8,00,000/- is justified in this case.

11. TO sum up, First Appeal No.411 of 2007 filed by the Appellant-Hospital is dismissed. The order of the State Commission finding Appellant-Hospital guilty of medical negligence and deficiency in service is upheld. First Appeal No.488 of 2007 filed by the Respondent-Complainant is partly allowed. The order of the State Commission is modified and the compensation of Rs.5,00,000/- is enhanced to Rs.8,00,000/-. Appellant-Hospital is directed to pay this amount to the Respondent-Complainant within a period of 12 weeks, failing which it will

carry interest @ 9% per annum for the period of default.

