(2014) 12 NCDRC CK 0098

In the National Consumer Disputes Redressal Commission

Stepheena — APPELLANT

Vs

LILLY JOSEPH — RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : 2015 1 CPJ 203

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : JOGY SCARIA , Sandeep Vishnu

Judgement

1. THIS order will decide the above detailed Revision Petitions, The RP 3257 -3259 of 2010 were filed by opposite parties for dismissal of Complaint and another RP 2568/2012 was filed by the complainant, the patient Lily Joseph, for enhancement of compensation.

2. FOR the convenience, the parties are referred as designated in the complaint. The facts are taken from RP/3257/2010. The Complainant, Lily Joseph, a Laboratory Technician, underwent abdominal hysterectomy, which was performed by OP -1, Dr. Stepheena at OP -2 Hospital, Fathima Matha Mission Hospital on 02.04.2003. During operation, she suffered injury to the bladder which was noticed on 10th post -operative day when it was diagnosed as Vesico Vaginal Fistula (VVF). Thereafter, she remained in the hospital for 25 days for further treatment, the leaking of urine persisted, therefore, she approached OP -2 on 19.05.2003 for VVF repair. Thereafter, she underwent 2 major operations at Malabar Hospital, Kozhikode on 24.05.2003 and on 09.08.2003 but no avail. Hence, she took treatment at Kasturba Hospital at Manipal, Karnataka, where on 29.01.2003 she was operated again and was discharged. Hence, the complainant alleged medical negligence due to act of OPs , she was subjected for long treatment, she lost her profession, suffered mental agony and filed a complaint before the District Consumer Disputes Redressal Forum, Wayanand, Kerala (in short, ''District Forum'').

3. THE District Forum allowed the Complaint and directed the OPs to pay a sum of Rs.5,60,000/ - as compensation, together with costs of Rs.5,000/ - Aggrieved

by that order, the Petitioner filed two separate First Appeal Nos. 289/2008 and No. 340/2008 before the State Consumer Disputes Redressal Commission, Thiruvananthapuram (in short, ''State Commission'') to set aside the order passed by the District Forum and the Complainant preferred First Appeal No. FA/380/2008 for enhancement of compensation.

4. THE State Commission passed a common order and confirmed the negligence of OP/Petitioner. It modified the order of District Forum, and directed the OPs to pay Rs.3,69,000/ -, with interest @ 12% per annum and the liability of compensation on the first Petitioner was quantified at Rs.1,00,000/ -.

5. AGGRIEVED by the order of State Commission, the parties filed these two revisions.

6. WE have heard the Counsel for the Petitioner/OPs who vehemently argued that, the patient had previously undergone tubectomy (PPS) operation, hence she developed adhesions around uterus. She was suffering from Fibroid Uterus with endiometeriosis. During surgery, it was noticed that the uterus was having multiple intramural fibroids, ruptured (L) ovarian cyst, endometriotic patches over the anterior and posterior uterine wall, pouch of Douglas. There were dense bladder adhesions, during surgery while separating bladder adhesions from the anterior uterine wall, an accidental injury was occurred to the bladder. OP doctor took immediate steps, called the surgeon Dr. V. J. Sebastian, FRCS working in the hospital, who repaired the bladder injury and done the vault closure. Bladder leak was checked by pushing gentian violet into the bladder. Post -operatively, patient was given antibiotics and catheter drainage continued. As per advice by the Urologist, bladder wash was given and the catheter was changed. But, on the 10th post operative day, i.e. on 12.04.2003, frank leaking of urine through the vagina was noticed. The urologist diagnosed it as VVF and swab tests were done. The patient was put on Amikacin injection. The patient was discharged on 23.04.2003 with an advice for Urology and review after 2 weeks. Thus the Counsel for OP finally concluded that the injury to bladder and VVF are accepted complications of hysterectomy. It is contended that OP -2 is a well qualified and experienced Gynecologist and the surgeon repaired the bladder injury completely. She was given post operative antibiotics and bladder drainage to aid healing of the wound. The VVF was developed due to impaired healing of the repaired bladder injury. On detection of VVF, Urologist intervention was done. Therefore, there was no negligence, on the part of OPs.

7. THE other Revision Petition 2568/2010 is filed by the Complainant/patient Lilly Joseph, after a delay of 660 days. The delay is explained in the application for condonation of delay, the relevant paras are reproduced as below: 3. That Applicant herein is seriously ill and is being supported by her friends and well wishers for her financial and monetary needs. 4. That the Applicant herein had previously engaged a counsel who did not attend to the matter properly and did not advise the Applicant to file the present revision Petition even though the Petitioner/Applicant was aggrieved by the impugned orders passed the Hon''ble

State Commission. 5. xxxx 6. xxxx

7. Thus on the advice of the present counsel, the Applicant applied for the certified copies on 09.05.2012 of the case file before the Ld. Consumer Commission, as the Petitioner/Applicant did not have the case file with her. Thus the Petitioner/Applicant took time get the certified copies of the case records from the Ld. Consumer Forum.

8. Thereafter the Petitioner/Applicant took some time to get the dim copies of the certified copies typed. Also the evidence recorded in the matter was noted down in Telugu and thus the Petitioner took time to get them translated into English.

We are not satisfied with the reasons stated above, the delay is hereby not condoned.

8. AFTER a thoughtful consideration and perusal of evidence on record; it is clear that Dr. Stepheena examined the patient and after Ultrasonography (USG) decided to perform abdominal hysterectomy operation. On the basis of medical literature and text books on Gynecology, firstly, prior to hysterectomy, the OP -1 should have treated the patient for Endometriosis, primarily for 28 days with medicines, like injection Lupride or Danzole. Secondly, during operation, OP -1 noted multiple fibroids and dense adhesions between anterior uterine wall and the bladder. Therefore, in such a case, the OP -1 should have been more vigilant while separating and dissection of bladder adhesions. It was the duty of OP to immediately seek opinion or assistance from the Urologist Dr. Santosh, who was working in the same hospital, during that period. But, she took help of another surgeon who repaired the bladder injury. The records show that the OP took help from Urologist on 10th Post operative day, when the patient developed VVF. Thirdly, we have perused the consent taken by OP, prior to hysterectomy. In our view; it was a Blanket Consent and not an Informed Consent. The consent does not show details about, whether the patient was informed about, Endometrioisis or adhesions, which may cause possible injury to bladder during operation. Fourthly, the OP had not produced histopathological report to support her diagnosis of multiple fibroids and Endometriosis. .

9. THE Hon''ble Supreme Court in the case of Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr., 1969 AIR(SC) 128 and A. S. Mittal v. State of U.P., 1989 AIR(SC) 1570 laid down that, "when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor."

In the case on hand, the OP -1 failed on all 4 counts as discussed in para (9) supra, OP -1 cannot take advantage on the "basis of known complication" hence, it was an act of omission, it is negligence.

10. WE have also noticed that the OP -2 acquired her MD Degree from Italy; it is not recognized in India by MCI. She possesses DGO from KMC Manipal, Karnataka. Surprisingly, our Government under NRHM scheme (National Rural Health Mission) trains the MBBS medical officers for performing the skills like, tubectomy, Medical Termination of Pregnancy (MTP), General and Emergency Obstetric Care (EmOC)/Emergency EmPC at selected institutions. Also the Postgraduates in DGO/ MO Gyn./MS (G.S) will be trained in Laparoscopic Sterilisation and Lower Section Caesarean Section (LSCS). Therefore, we do not find any ambiguity in the qualification of OP -1, she is DGO and she is qualified to perform hysterectomy.

11. THE quantum of damages awarded is justified by evidence of economic loss and non -economic harm. Economic damages include past and future medical expenses, lost, past and future income, and other costs. The State Commission has made well considered observations and awarded the proper compensation; therefore it does not warrant our interference. Hence, we dismiss all the revisions on merits. However, RP 2568/2010 is also dismissed on the ground of inordinate delay. Parties are directed to bear their own costs.

