(2013) 11 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

SURINDER SINGH — APPELLANT

Vs

Escorts Heart Institute , A.K. Omar Managing Director , Naresh Trehan — RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : 2013 0 NCDRC 766 : 2014 1 CPJ 25

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : SAJAD SULTAN , VIVEK JAIN

Judgement

1. SURINDER Singh has filed the present complaint under section 21 r/w Section 12 of the Consumer Protection Act, 1986, (in short, the ''Act '') seeking compensation to the tune of Rs.32,00,000/ - with interest alongwith cost alleging medical negligence on the part of the OP / Hospital and Doctors. Initially a complaint was preferred against M/s Escorts Heart Institute and Research Centre, New Delhi and Dr. A.K. Omar but subsequently by way of amendment the complainant impleaded Dr. Naresh Trehan also as OP No.3.

2. BRIEFLY stated allegations in the complaint are that on 14.11.2001 the complainant took his wife Varinder Kaur to the OP No.1 Hospital for treatment. She was examined at the hospital and a package deal of Rs.3,35,000/ - was offered which included the treatment as also the heart surgery besides costs of tests required and preparation of video film. The complainant deposited the same amount with OP No.1 and his wife was admitted. She was put to various examination and ultimately it was declared that wife of the complainant required by -pass surgery but before that her blood glucose level was to be brought under control. It is alleged that on 24.11.2001 Varinder Kaur was taken to the operation theatre and was operated upon inspite of the fact that she had suffered a cardiac arrest. It is the case of the complainant that after sometime, he was told that operation was successful and the patient had been removed to the ICU. However, no relative including the complainant as also sons and daughters of the patient were allowed to see her. Complainant, however, was asked to bring

medicines on various occasions till 26.11.2011 which were supplied. It is alleged that from 14.11.2001 till 26.11.2001 all the family members of the complainant remained at the Institute ''s waiting hall taking turns. After the so -called surgery, the complainant and other relations were told that patient was progressing very well. Surprisingly on 26.11.2001 at 12.30 p.m., the hospital authorities informed the complainant that his wife Varinder Kaur had expired. It is alleged that complainant and relations came to know that Varinder Kaur had expired on 24.11.2001 before she could be operated. Despite that her dead body was given incisions to give an impression that the surgery was actually conducted. There were no blood stains on the body which indicated that the body was cut after the death. The complainant then demanded video clip of the alleged by -pass surgery but he was told that no video film was prepared. It is also alleged that out of total sum charged by OP No.1, a sum of Rs.50,000/ - was refunded on the plea that video film was not prepared. Claiming the above referred conduct of the OPs to be unfair trade practice as also negligence and deficiency in service, the complainant filed the complaint seeking compensation of Rs.32,00,000/ - with interest besides cost.

3. OP No.1 in its written statement denied the allegations made in the complaint. According to OP No.1, the complainant ''s wife was brought in ambulance from Yamuna Nagar in critical condition and she was given treatment of highest standards. It was alleged that patient Varinder Kaur was brought to the respondent / hospital for the first time on 05.04.2001 for consultation with the history of mitral regurgitation with family history of coronary artery disease. She was advised to undergo angiography and the result of angiography reveal the following : Anterior wall hypokinetic, posterior wall akinetic, apical wall hypokinetic, LVEF 35% , sever mitral regurgitation, right coronary artery - 100% proximal stenosis, left anterior descending artery - 70% proximal stenosis, left circumflex 40% proximal stenosis and 90% distal stenosis, IIIrd obtuse marginal 70% proximal stenosis.

4. ON the basis of angiography report she was diagnosed as a case of Triple vessel disease, severe MR and Moderate Left Ventricular dysfunction. She was advised on the same day to undergo CABG + MVR. She was thus advised surgery. The patient did not report for surgery as advised till she was admitted on 09.11.2001 in Gupta Hospital, Yamuna Nagar with history of chest pain with radiation to left arm of 3 days duration. At Gupta Hospital she was diagnosed as a case of anterior wall myocardial infarction and was treated conservatively. She had two episodes of post myocardial infarction angina lasting 10 -15 minutes. The last episode occurred on 13.11.2001 at 9.00 p.m. She developed hypotension and was on dopamine. The patient was then referred to the OP / Hospital and admitted in the hospital in critical condition on 14.11.2001. Necessary tests were conducted and the patient was taken for surgery i.e. CABG and Mitral Valve Repair (MVR). However, before starting the surgery, the patient developed Ventricular Fibrillation. The patient was immediately resuscitated by cardiac massage and DC shock and it was decided to put her on IABP support

and cardiopulmonary bypass support. Thereafter, Arota was cross clamped and cardioplegia was given. This is a conventional bypass surgical procedure. During the surgical procedure, LAD and OMI were bypassed with reversed saphenous vein grafts and mitral valve repair was done. The patient was weaned off cardiopulmonary bypass on heavy inotropes and IABP support. The patient was shifted to the recovery on the same day with IABP and inotropic support and cordarone and Xylocard infusion. Post operatively patient continued to be haemodynamically unstable despite such high support and had recurrent episodes of ventricular tachycardia (VT), most of which were self -reverting. However, open cardiac massage with electrical cardioversion was required at one time. On 1st postoperative day, urine output decreased so she was put on Lasix infusion. The hemogynamic status remained low, so Ephinephrine infusion was increased. The patient had two episodes of self - reverting VT on 25.11.2001 at 10.30 p.m. On 26.11.2001, the patient had multiple episodes of ventricular tachycardia, which did not revert despite open cardiac massage and DC shock. Despite all cardio respiratory rescuscitative efforts, patient could not be revived and was declared dead at 12.30 p.am on 26.11.2001. Regarding the package deal, OP No.1 alleged that package deal for surgery was Rs.2,50,000/ - and not Rs.3,35,000/ - as alleged in the complaint. It was denied that package deal included any video film and was alleged that in fact no video clip of bypass surgery is taken by the hospital. It was also denied that relatives were not allowed to see the patient and alleged that nurses notes clearly documented that the relatives came and saw the patient and also met Dr. Naresh Trehan, Chief Cardiac Surgeon on 24.11.2001 at 7.15 p.m. and that it is standing operating procedure in the institute that the relatives were called to see the patient when the patient is shifted to recovery from OT and later on twice a day. OP No.1 further denied that a sum of Rs. 4,50,000/ - was charged from the complainant which also included video film. It was alleged that total bill for payment was Rs.3,83,037/ - out of which a subsidy of Rs.1,03,037/ - was given to the complainant on humanitarian grounds. It was also alleged that patient was operated by Dr. Naresh Trehan and there was no medical negligence on the part of the hospital or the other OPs.

5. OTHER OPs have also denied the allegations in the complaint and they have specifically denied that there was any medical negligence on the part of the doctors or that they had operated the dead body of the deceased after she had died at the operation table as a result of cardiac arrest.

6. COMPLAINANT Surinder Singh has filed his affidavit in support of his claim in the complaint and reiterated the allegations made in the complaint. In rebuttal OP No.1 filed the affidavit of Dr. V. R.Gupta, Medical Superintendent and proved on record copy of Angiography report dated 05.04.2001, copy of cardiac evaluation form dated 14.11.2001, copy of Echo Report dated 14.11.2001, copy of Angiography report dated 17.11.2001, copy of the high risk informed consent form, copy of the extract detailing ventricular fibrillation, copy of the breakup of package, copy of the nurses chart and notes dated 24.11.2001, copy of the

detailed bill, copies of the nurses chart dated 25.11.2001 and copies of critical flow chart of 24.11.2001 to 26.11.2001. Op No.3 Dr. Naresh Trehan also filed his affidavit in support of his written statement indicating that the deceased patient was given the treatment of highest standards and there was no medical negligence.

7. WE have heard the rival parties and perused the material on record. Shri Sunil K Kalra, Advocate, learned counsel for the complainant has contended that OPs are guilty of medical negligence as also unfair trade practice inasmuch as they operated upon the dead patient with a view to extract the surgery charges. It is contended that this is proved from the fact that though the medical package included the charges for videography of the surgery, no such clip was given to the complainant despite of demand. He further contended that from the statement of the complainant, it is evident that relatives of the patient were not allowed to meet or see her till her death was announced on 26.11.2001 and this fact leads to the conclusion that the patient had died at the operation table on 24.11.2001 before the surgery could be done.

8. LEARNED counsel for the opposite parties on the contrary have referred to the relevant investigation reports and the treatment record including the copy of the nurses chart and notes and submitted that Ms. Varinder Kaur was given proper treatment and there was no negligence on the part of the treating doctors or the hospital. The plea of the complainant that Ms. Varinder Kaur had actually died before the commencement of surgery is only a make belief story to extract money from the opposite parties. On careful perusal of the evidence, we do not find any merit in the plea of the complainant that his wife Varinder Kaur had expired in the operation theatre before the commencement of surgery and because of that reason, no videography of the surgical procedure was done.

9. OPPOSITE parties have proved on record the nurses charts / notes maintained by Duty nurses who attended to the patient Virendr Kaur after the surgery till 26.11.2001 12.30 p.m. when she was declared dead. Perusal of the nurses chart would show that as per the progress notes of the patient on 24.11.2001 at 7.15 p.m, the nurse has recorded "relative of the patient has seen her and talked with Dr. Naresh Trehan ". In the same chart, night shift nurse has recorded the progress note confirming having taken over the charge of aforesaid female patient who had underwent CABG x 2 + MV repair on the same day. Further perusal of the nurses chart entry dated 25.11.2001 at 6 p.m. reveals that on the said evening the relative of the patient had visited her and her condition was explained to the relative by the doctor. The aforesaid progress notes recorded by the respective duty nurses have been recorded from time to time on 24.11.2001 and 25.11.2001. From this, it is evident that the progress notes on the nurses chart have been recorded by the nurses in due course of business. Therefore, there is no reason to disbelieve the entries recorded in the aforesaid nurses chart. Not only this, opposite parties have also placed on record photocopy of the treatment record of the patient Varinder Kaur which also indicate that Varinder

Kaur had a successful surgery and she was given follow up treatment but unfortunately she died on 26.11.2001 at 12.30 p.m. From this it is clear that Ms. Varinder Kaur underwent surgery and was very much alive till 26.11.2001 afternoon. As regards the plea of the complainant that no videography was done with a view to conceal that the patient had actually died on 24.11.2001 before the surgery, it would be relevant to have a look on the copy of the bill pertaining to the treatment of Varinder Kaur dated 27.11.2001, which is annexure R -7. This bill records break -up of package deal wherein no mention of video filming of the surgery. Therefore, we are not inclined to believe the aforesaid claim of the complainant. We may note that during the course of arguments, a query was put to learned counsel for the complainant as to when the complainant realised that his wife had died before the surgery. In answer to that query, learned counsel for the complainant submitted that complainant came to know about this fact on the receipt of the dead body when he noticed that there were no blood stains on the incision done for the by -pass surgery which raised a suspicion that the incisions were made on the dead body. If that explanation of the complainant is true, then we may fail to understand as to why the complainant did not insist for post -mortem of the dead body of the deceased as it would have clinched the issue by establishing duration / time of the death of deceased. In view of the above noted circumstances, we do not find any merit in the plea of the complainant that his wife had died before the commencement of surgery. Our aforesaid opinion gets strengthened from the fact that the complaint has been filed by the complainant after a lapse of almost a year from the date of death of his wife. Had the version of the complainant been true and had he been suspicious about the death of his wife before the commencement of surgery, under normal course of circumstances, he would not have waited for a year to file a complaint against the opposite parties.

10. LEARNED counsel for the complainant has also made a half hearted submission that the opposite parties are guilty of medical negligence in the treatment of Varinder Kaur which resulted in her death. The complainant, however, has not led any cogent evidence in support of this contention. On the contrary OP No.3 Dr. Naresh Trehan has filed his affidavit detailing the treatment given to the patient and the procedure adopted in the surgery. The opposite parties have also placed on record the copies of pre -surgery investigation reports Ex. RW 3/1 to RW3/5, copy of "high risk informed consent form " Ex. RW3/6, copy of the operation notes Ex. RW3/8, copies of the nurses charts of 24th and 25th November, 2001 Ex. RW3/7 as also the copy of critical care flow charts for the period 24.11.2001 to 26.11.2001. On perusal of the above record we are of the view that Ms. Varinder Kaur was given proper treatment and just because she did not survive it cannot be said that opposite parties were guilty of medical negligence particularly when there is no evidence to show. Thus, we do not find any evidence to justify the conclusion that opposite parties were guilty of medical negligence or the quality of treatment given to the patient Varinder Kaur was sub -standard. In view of the discussion above, we are of the opinion that

the complainant has failed to establish that either of the opposite party was guilty of medical negligence or of unfair trade practice. Complaint, is therefore, dismissed with no order as to costs.

