(2014) 11 MAD CK 0089

In the Madras High Court

Case No : Crl. O.P. No. 23211 of 2008

T. Sulochana — APPELLANT

Vs

Inspector of Police — RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 304-A

Citation : (2015) 1 MLJ(Cri) 265

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Sudha Ramalingam, Advocates for the Appellant; S. Shanmughavelayudham, Public Prosecutor, Advocates for the Respondent

Judgement

S. Nagamuthu, J.—This is an unfortunate case of medical negligence which has lost the precious life of an young girl, hardly aged 13 years. She was studying VIII Standard in a local School. Seeking a direction to the police to reopen the investigation of the case and to file a final report against the Doctors, who were stated to be grossly negligent and also seeking compensation of Rs. 5,00,000/- the mother of the victim has come up with this original petition.

2. The brief facts of the case would be as follows: The petitioner is the mother of one T. Sudhasini, who was studying in a local School. On 22.07.2006 she complained of diarrhea. She was immediately taken to the Government Hospital at Vedaranyam in Nagapattinam District by the petitioner at 09.00 a.m. According to the petitioner, one Dr. Pandiyan attached to the said hospital was very much available, but, he was very busy with the other patients. Therefore, the petitioner approached yet another Doctor by name Dr. Sumathi, who was also in the same hospital. But, according to the petitioner, Dr. Sumathi instead showing concern for the request of the petitioner to attend on Sudhasini, was found locked in unnecessary discussion with yet another woman. One Dr. Ramachan-dran, thereafter, admitted Sudhasini and gave some kind of

treatment. However, she died in the hospital around 1.15 p.m. According to the petitioner, the death of the deceased was due to the gross negligence on the part of the Doctors.

3. In this regard, on a complaint made by the petitioner, the 1st respondent registered a case in Crime N0.318 of 2006 under Section 174 of Cr.P.C. [suspicious death] and inquest was conducted. Thereafter, the body was sent for autopsy. One Dr. Sampath Kumar, Senior Assistant Surgeon, attached to the Government Hospital, Nagapattinam, conducted autopsy on the body of the deceased. Visceral organs were sent for chemical analysis which revealed that drugs or other poison was not detected in any of the visceral organs. Finally, the Doctor gave opinion that the deceased would appear to have died of shock due to "Necrotising Entero Colitis". Thereafter, the FIR was closed as action dropped.

4. According to the petitioner, the Deputy Director of Medical and Rural Health Services and Family Welfare, Vellore, conducted enquiry into the charges levelled against the Doctors. He submitted a report on 10.05.2007. In the said report, he has concluded that there was negligence on the part of Dr. Ramachandran, who treated the patient. According to the petitioner, had there been a proper diagnosis and treatment, the patient would have been saved easily. Based on the report of the Deputy Director, now, the petitioner has come forward with this original petition seeking the reliefs as set out above.

5. In the counter affidavit filed by the 3rd respondent, it is stated that the patient had the history of loose motion with mucus and bleeding for three days. With that critical condition only the patient was admitted on 22.07.2006. It is further stated in the counter that Dr. Ramachandran was the only Doctor on the day of admission of the patient - Sudhasini. It is also stated in the counter that the Joint Director of Health Services, Madurai, who had conducted enquiry, submitted a report holding that the charges against Dr. Ramachandran were proved. Based on the same, Dr. Ramachandran was imposed a punishment of stoppage of increment for one year with cumulative effect. It is further stated that so far as yet another Doctor, Dr. Karuthhapandian is concerned, the charge framed against him abated as he passed away on 24.10.2010. So far as the charges against Dr. Sumathi are concerned, it is stated that disciplinary action was dropped against her because the enquiry officer submitted an enquiry report that the charges had not been proved.

6. In the final paragraph of the counter affidavit, it is stated that the life of the patient could have been saved, if she had been brought to the hospital on the same day, when she had initially complained of diarrhoea. It is further stated that the post-mortem report reveals that the patient died of shock due to purification by damage of small bowel and large bowel due to infection. The counter further states that for this lapse on the part of Dr. Ramachandran, disciplinary action was initiated and punishment was also imposed on him. If the patient had been brought to the Government Hospital for treatment at the appropriate time, she would not have suffered the said infection and she could

have been saved.

7. I have heard the learned counsel for the petitioner and the learned Public Prosecutor for the State and also perused the records carefully.

8. Referring to the counter affidavit, the learned Public Prosecutor would submit that the cause of death has got nothing to do with the negligence on the part of Dr. Ramachandran. It is true that Dr. Ramachandran had misdiagnosed the patient and also did not take proper care to give treatment to the patient. But, that was not the cause for the death. According to the leaned Public Prosecutor, departmental action was initiated against him and a punishment was also imposed on him. That itself would be suffice, he submitted.

9. I have considered the above submissions carefully.

10. The right to life is so precious and the same has been guaranteed under Article 21 of the Constitution of India, which is considered to be the soul and heart of the constitution. Article 21 has been liberally interpreted by the Hon''ble Supreme Court on several occasions wherein the Hon''ble Supreme Court has repeatedly held that providing adequate medical services to the people is the constitutional obligation of the State falling within the sweep of Article 21 of the Constitution. Having taken note of the said constitutional obligation and having taken note of the fact that despite lapse of several decades after the coming into force of the Constitution, since there were shortcomings on the part of the Governments in providing adequate medical services, the Hon''ble Supreme Court had to issue certain directions in Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, . But, it is not known whether in this State the directions of the Hon''ble Supreme Court have been scrupulously complied with or not. For the purpose of this case, I feel that I need not go into the said issue. In the instant case, it is suffice for me to hold that the Doctor attached to the Government Hospital did not show adequate care on the patient. It is no more a disputed question of fact because the Deputy Director of Medical Services, who conducted enquiry has so concluded in his report which is available for this court for consideration.

11. In the report, he has stated as follows:

"The next point of importance is whether the proper treatment had been instituted or not?

The statement of Dr. Ramachandran, the duty doctor who had treated child Sugasini is as follows.

The Dr. Ramachandran had most probably come by 7.30 a.m. to 7.45 a.m. That day and most probably left the O.P. by 10.00 or 10.15 a.m. Since the MNA had gone by 8.30 a.m. and the staff nurse Vijayalakshmi had left by 9.00 a.m.

The duration of surgery in a non taluk hospital beginning from wheeling in the patient. Induction of Anaesthesia, draping and actual surgery with closure would

be about 30 minutes and third case of failed anaesthesia due to some complication would be about 20 minutes to 30 minutes. Hence, Dr. Ramachandran would have left the theatre by 11.30 to 11.45 a.m. The post mortem examination would be the usual routine one where the doctors part would have lasted till 12.15 to 12.30 p.m. or as stated by the Pharmacist at 12.45 p.m.

The Duration of OP activity would have been only about 15 minutes to 150 minutes or at the maximum 2 minutes to 4 minutes would be spent on each case for entrancing the history and symptoms examination of the case wrong of OP chit and drug slips.

Dr. Ramachandran has stated that he had taken 5 minutes for each case which is not true he had stated that he had taken 10 minutes for examining Selvi Sugasini out of which he had taken 65 minutes for history taking, of the remaining 5 minutes one minute for general examination one minute for cvs and Rs. Examination.

It is humanly impossible to examine a case within 5 minutes (five) leave along other cases especially this case which is long surgical case and requires 45 minutes for detailed examination.

Hence negligence and improper treatment has been made out at the first instant itself in so much not even a cursory examination of the patient had been made as corroborated by the deposition of Smt. T. Sulochana.

The first Diagnosis of only AMOEBIC Dysentery

Bloody Dysentery

Hence a serious malady was missed and a simple diagnosis of only AMOEBIC Dysentery has been made. Even the preventive Diagnosis could not be made out at least a BROADER PROVISIONAL DIAGNOSIS of Acute Abdomen should have been made. Such is the case and if the Admitting Doctor had examined thoroughly then the seriousness of an acute abdomen would have prompted him to just give a first aid treatment and OPT for an immediate referral to a secondary or Tertiary Centre where the child could have been saved.

Subsequently when the child become critically ill and when the help of Dr. A. Ramachandran was sought by the frantic Parents it was refused bluntly. The parents drew a blank when they had approached Dr. Pandiyan who was with Dr. Sumathy viewing a TV as deposed by Dr. Pandiyan Himself. It is thereby logically and rationally concluded that there was not even an IOTA of Human consideration in this three doctors namely, Dr. Ramachandran, Dr. Pandiyan, Dr. Sumathi all the three of them have shown negligence in the non implementation of the requisite treatment. Dr. Ramachandran is also negligent in that he had summarily and peremptorily made a wrong diagnosis and had just given treatment for Amoebic Dysentery as is evident by the prescription of Inj. B.C./ TAB LOPARET and ORS and which had been struck off later. The DIL and NIL Oral

have been added later to support his alleged after thought diagnosis of intussusception. The presence of anaemia with the pale and wan look and supposed dehydration which are all signs of Hypo perfusion and the fact that the patient is imminent shock has been missed by the duty doctor Dr. S. Ramachandran due to lack of cursory examination.

This imminent shock could have been noticed if the BP and pulse had been really recorded which would have shown Hypotension or fall in the BP with a rapid therapy pulse. If timely measures such as plasma expander IV fluids and if needed IV Cortico Steroids and continuous oxygen had been instituted the child would have been rallied around in 1/2 an hour to 1 hour and the patient could have been safely transferred to the head quarters hospital with the oxygen and IV fluid on flow with a staff nurse and requisite parental medications where an emergency surgery might have saved this young life.

The absence of repeated vomiting absolute constipation, Reniform mass I concavity towards umbucus, rib and severe pain reveal that the patient was not suffering from Intestinal intussusceptions and it would have been evident to Dr. Ramachandran if he had at least made a rapid cursory examination. Hence, it is an after thought insertion of a diagnosis of severe nature to support his misdiagnosis and to cover his wrong treatment in admitting the patient and the incorrect treatment given when a referral to a higher institute after stabilisation would have sufficed. All three doctors namely Dr. S. Ramachandran, Dr. Karuthapandian and Dr. Sumathy had absconded from duty as there were no medical personnel (i.e. Doctors) at the time of collapse which might have been from 12.30 p.m. to 12.45 p.m. as deposed by staff nurse Vijayalakshmi, Staff nurse Amudha, MNA Selvaraj, Pharmacist Vaidhyanathan, Asst. Vaidehi and last but not least Smt. T. Sulochana, the mother of the deceased child Sugasini. The parents of the deceased child have remained till 1.30 p.m. on 22.07.2006."

12. This finding is not disputed by the respondents. It is based on these findings only the charges were framed against the Doctors including Dr. Ramachandran, in which, he was found guilty and punishment was imposed. At the same time, from the records, I find that there are no materials even to infer that there was gross negligence on the part of the Doctors so as to be prosecuted under Section 304-A of IPC. Therefore, I am not inclined to issue any direction for reopening the case for further investigation.

13. The next question remains for consideration is as to whether the petitioner is entitled for compensation and if so, what the quantum is.

14. The learned Public Prosecutor relying on a judgment of the Hon''ble Supreme Court in State of Punjab and Others Vs. Kuldip Singh, would submit that in the said case compensation was fixed only at Rs. 20,000/-. In my considered opinion that cannot be taken as a precedent inasmuch as in that case going by the facts of the case and the nature of the injuries sustained, the Hon''ble Supreme Court fixed a compensation of Rs. 20,000/-.

15. In the instant case, the deceased was hardly 13 years old at the time of death and she was studying VIII Standard in a local school. Admittedly, the death was not due to natural cause. She was the only girl child. She had been lovable to her mother and family members. Having regard to the facts and circumstances of the case, I am of the considered view that directing the Government to pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) towards compensation to the petitioner with interest @ 9% per annum from today (i.e.) 28.11.2014 would meet the ends of justice. In the result, the criminal original petition is partly allowed in the following terms:--

"(i) The 3rd respondent shall pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) to the petitioner with interest @ 9% p.a. from today (i.e.,) from 28.11.2014.

(ii) The request for re-opening the case is dismissed.

