(2014) 12 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Case No : NO 3887 of 2012

THAVARMAL (DECEASED) & ORS. — APPELLANT

Vs

SHEELA MATERNITY HOSPITAL & FRACTURE — RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2015 2 CPJ 618 : 2015 5 ALD 33

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

Advocate : R. Sathish, B. S. Sharma, Vizzy Agarwal, Rakesh Bhargawa

Judgement

1. The present Revision Petition has been filed before this Commission under Section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 23.07.2012 in Appeal No. 1578 of 2007 passed by the State Consumer Disputes Redressal Commission, Rajasthan (in short, ''State Commission''). The State Commission dismissed the Appeal filed against the order in Complaint No 174 of 2006 dated 23.08.2007 passed by the District Consumer Disputes Redressal Forum, Churu, Rajasthan (in short, ''District Forum''). The State Commission, Rajasthan also dismissed the Cross Appeal No. 1596 of 2007 preferred by the Complainant.

2. The facts in brief are that Smt Saroj (since deceased- referred hereinafter as "patient") wife of complainant Thavermal was assured of normal delivery by the Opposite party Dr. Sheela Bhargava at Sheela Maternity Hospital & Fracture Clinic. She delivered a male child on 15.06.2006. It was alleged that during delivery, the OP-2 applied/made more pressure on the abdomen of Smt. Saroj, which caused huge bleeding. The OP-2 was requested many times but she did not visit immediately, but took 35 minutes, hence, patient suffered further loss of blood. The OP-2 administered the injection and prescribed many medicines but there was no improvement. Her condition was further deteriorated; hence she was referred to government hospital in an unconscious state, without a referral slip. The complainant alleged that, it was the duty of OP-2 to take steps to stop

bleeding, after delivery, but she did not make any attempt in proper time, which caused death of Smt. Saroj. Therefore, the complainant filed a complaint before District Forum for alleged medical negligence and prayed Rs.10,000,00/- compensation from the OPs.

3. The District Forum allowed the complaint and directed the OPs to pay Rs.6,03,000/- with interest @ 9% p.a. from the date of complaint. Aggrieved by the order of the District Forum, cross appeals were filed by the parties. The OPs filed an appeal, FA/1578/2007 for dismissal of complaint and the Petitioners filed an appeal being FA/1596/2007 for enhancement of compensation.

4. The State Commission allowed the appeal FA 1578/2007 and dismissed the complaint. Aggrieved by the order of State Commission, the complainant preferred this revision.

5. The Learned Counsel for the Petitioner/Complainant vehemently argued that the Doctor was negligent on several counts, the hospital of OP was ill equipped. He contended that the patient was having a rare blood group i.e. B Negative. The OP was not careful, blood was not arranged, prior to delivery. There was no consent. The authorization form was arbitrary, the translation of the documents was not correct. Counsel brought our attention to the Indoor Ticket of Government Hospital, that no blood was transfused, thus the OP unnecessarily referred the patient to the Government Hospital, to shift its responsibility and negligence.

6. The Counsel for the Petitioner produced a literature on Blood Groups and referred Bolam''s Principle and Jacob Mathew''s case . He submitted that the OP failed under different heads, like prevention, performance, diagnosis, drug treatment and the system (hospital failure), there was omission of duty of care on the part of OP. He relied upon, the Laxman Balakrishnan case 1969 (1) SCR 206. He further submitted that, it was a culpable negligence and the rule Res Ipso Loquitor could be invoked. He further argued that there was an inordinate delay in instituting the treatment, the treatment records have not properly mentioned the details as to when the OP prescribed medicines, like Methergin, Deviprost, Reglan, Gynotocin (Oxitocin).

7. The rival arguments by learned counsel for OP were that the OP Dr. Sheela Bhargava was a senior lady doctor in Churu, she did not charge any fees from the patient. It was the patient''s fifth delivery, and the baby was delivered, without any external pressure on her abdomen, no stitches were put. Delivery was conducted with care and caution. The patient Saroj''s previous 4 deliveries were normal, full term delivery. The hospital record clearly shows that she was admitted at 8.00 p.m. with labour pains though she was suffering from pains since 03.00 p.m. The delivery took place smoothly at 09.25 p.m. Counsel brought our attention to the Admission Record of Smt. Saroj which reveals that, immediately after the delivery, the placenta with membrane had also been delivered completely, but the uterus was not relaxed (atonic) and there was

bleeding per vagina. Though cervix was eroded, there was no cervical tear. The OP administered Injection Methergin and Deviprost to enable contraction of uterus to stop bleeding, removed the clots from the uterine cavity and gauze packing was done. Thereafter, the uterus contracted well and the patient was stable, had pulse of 80 per minutes and blood pressure of 90 mm of Hg. However, as the patient was still bleeding pr vagina, in order to replace the blood loss, injection Haemaccel drip was administered and the relative of the patients were asked to arrange two units of blood. The OP took every step to maintain Blood Pressure by giving injection mephentineand by Dopamine drip. Hence, the OP was not negligent.

8. After a thoughtful consideration, it is clear that the patient was multipara, it was her 5 th delivery. Usually, at the time of delivery, no person, other than doctor and hospital staff are present in the labour (delivery) room. A bare perusal of medical records reveal that Smt. Saroj was given line of treatment for Primary Postpartum Haemorrhage (PPH). According to OP, the PPH was a known complication of any delivery. In this context, we have perused the relevant medical literature on PPH, accordingly, in this case, it appears to be Atonic PPH. The atonic PPH is more commonly seen in the multi parity, previous PPH, pre-eclamsia, placenta praevia, placental abruption, prolonged labour, infection and operative deliveries. Therefore, the submission of counsel for complainant that bleeding was due to rupture of veins because of excessive pressure to the abdomen of patient, is unacceptable to us.

9. Interestingly, the main controversy swirls around the question, as to why the patient was referred to Govt. Hospital ? The OP was unable to succeed in stopping PPH, despite the best efforts. The patient''s blood group was B Negative, it''s a very rare group and it will be a very hard task to procure blood at eleventh hour. The patient was under treatment of OP and ANC follow-up, it was her duty to caution the relatives for need of blood in some unexpected situations. Few B Negative live donors should be reserved, prior to delivery. We are rather confused to know that, OP referred the patient to the D B Govt. Hospital, without knowing availability of blood there. The medical records of D B Govt Hospital show that, on admission at 11.10 pm, patient was unconscious, she was attended initially by the Ancillary staff and later by Dr. Sushila Joshi, M.B.B.S. and the Specialist Dr. Goga Ram, Jr. Specialist (Gyn.), did not turn up, despite emergency call. Thus, referring a patient to Govt hospital, was an unnecessary effort by OP. It appears that OP wanted to wriggle out from it''s primary responsibility. It should be borne in mind that, every PPH should not be taken as a known complication. The Obstetric haemorrhage that remains unresponsive to medical and obstetric management, may require specific investigations for bleeding treatment through hysterectomy or litigation of internal iliac artery. The decision to proceed with a hysterectomy should be proper in this case, because mother''s life is of paramount concern. It should be judged, taking into account, maternal safety, the urgency if situation, likelihood of success with other options, and desire of the patient whether she wants to

have additional children or not. Thus, the OP failed to perform hysterectomy at the crucial point of time, but unnecessarily referred the patient to the Govt hospital. It is pertinent to note that, unfortunately, the doctors at D B Govt Hosital did not attend to the patient, in time, which caused unfortunate death of the patient.

10. In the instant case, we rely upon, the judgments of Hon''ble Supreme Court in this case of Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A. S. Mittal v. State of U.P., AIR 1989 SC 1570 where it was 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. Therefore, on the basis of forgoing discussion, it is clear that, there was breach of duty on the part of OP-1 who failed to undertake proper blood investigations during emergency and failed to perform hysterectomy or Internal iliac artery ligation to stop PPH; but unnecessarily referred the patient to Govt hospital. It amounts to negligence. Therefore, we set aside the order passed by the State Commission. It is apparent from the record that, there is no cogent evidence about the income of deceased Smt. Saroj. Her husband, Sh. Thavarmal i.e. the Complainant No.1 had passed away during pendency of this case. Therefore, we modify the order of District Forum and direct the OPs to pay a lump sum amount of Rs.5,00,000/- (Five lacs) to the LRs on record, within 90 days'' from the receipt of this order, otherwise, it will carry interest @ 9% per annum till it''s realization.

