(2015) 06 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 490 of 2015

USHA BANSAL NURSING HOME & ANR. — APPELLANT

Vs

PRITAM SINGH & ANR. — RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:
Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 407

Hon'ble Judges : J.M. Malik

Advocate : Petition dismissed.

Judgement

1. Both the Fora below have decided the case against the above said petitioners namely, Usha Bansal Nursing Home Pvt. Ltd. & Anr. Sh. Pritam Singh, Complainant developed a boil on his little finger of right hand. He was operated upon without taking the sufficient precautions on 11.01.2001. Ex-CW-2/A is the report of the Lab. dated 11.01.2009. Ex.CW-1/B is Lab. Report regarding Blood Sugar level 305mg. and blood urea 38 mg. This is an admitted fact that thereafter the patient was treated by another Dr. Sanjay Mishra. It transpired that it was a case of gangrene and it occurred due to the fact that the complainant was a diabetic. His little finger had to be amputated on account of setting in of gangrene therein. The complainant had to spend a lot of amount in the sum of Rs.2,000/- earlier and Rs.70,000/- due to the above said treatment.

2. He filed a complaint before the District Forum. The District Forum allowed the complaint. It held that the OPs 1, 2 and OP-3 (United India Insurance Company Ltd.) are jointly and severally liable. OP-3 was directed to pay total amount of Rs.1,50,000/- within a period of two months, else it it will incur interest @ 7?% per annum.

3. The State Commission dismissed the appeal.

4. The Revision Petition was filed by OP1 & OP2. I have heard the counsel for the petitioners. He submitted that no negligence can be attributed to Dr. Mukesh

Bansal, petitioner No. 2. He has performed the operation as per the known standards of the medical practice. He vehemently argued that the case of the complainant hinges upon the statement of Dr. Sanjay Mishra. He has invited our attention towards his statement recorded subsequently. Its relevant portion runs as follows:- "Complainant was a diabetic patient as per the condition of the patient and his wishes the patient is being treated by the dr. either he is to be admitted in the hospital for giving insulin otherwise also OPD patient such like treatment given as outdoor patient. The Dr. who have given treatment previously i.e. Dr. Mukesh Bansal MS General Surgeon in my opinion was not negligent to give treatment to complainant. He might have given treatment as per his best ability admissible in medical practice".

5. These arguments are bereft of merits. The negligence of the petitioners is discernible on two following points. First of all, Dr. Sanjay Mishra can give his opinion but his opinion may be acceptable or may not be acceptable to the Commission. OP2 does not state what steps were taken after coming to know that the patient is a diabetic. The complainant was a known case of diabetes and in need of minor operation, even then he should have been admitted for regular check up of the blood sugar level, cleaning and dressing of the wound in hospital and antibiotic coverage. There is no evidence on the record, which may go to show that insulin was given to him. Though it may not be necessary to admit him in the hospital but the first and foremost duty cast upon the doctor was to cure the blood sugar or give him insulin before taking the plunge to operate him as well as afterwards the doctor could not specify what steps were taken. It is well known that the haste makes waste. The recovery of a serious patient is to be wooed by slow advances. The fee of the doctor was not to vanish even if he had taken 2-3 days or hours more in satisfying that after effects would not be dangerous. He did it hurriedly, for the reasons best known to him.

6. The second point of negligence is that the Doctor tried his best to hide the omissions and commissions done by him. After the operation, the Doctor advised the complainant to take some medicines for five days. The complainant took the medicines but the pain did not subside but rather started increasing. On 15.01.2009, the complainant visited OP-2, he took the first prescription slip from the patient, tore it out and then gave him another slip dated 11.01.2009 by stating that there was no need for further check up. It smacks malafide intention on the part of the Doctor.

7. Res ipsa loquitur or res ipsa, as it is commonly called, is really a rule of evidence, not a rule of substantive law. It is a Latin maxim which means ''the thing speaks for itself''. A rebuttable presumption or inference that the defendant was negligent, which arises upon proof that the instrumentality or condition causing the injury was in the defendant''s exclusive control and that the accident was one that ordinarily does not occur in the absence of negligence. Res ipsa loquitur is one form of circumstantial evidence that permits a reasonable person to surmise that the most probable cause of an accident was the defendant''s

negligence.

8. In the case of "Achutroa Haribhan Khowda & Ors. Versus State of Maharashtra & Ors." [1(1996) C.L.T. 532 SC], it was held that, "where the Doctors act carelessly and in manner which is not expected of a Medical practitioner, in such a case action on torts would be maintainable".

9. Also in the case of " Kishan Rao Vs. Nikhil Super Specialty Hospital & Anr." (SC) 2010 (2) RCR (Civil) 929, it was held that, "Medical Negligence claim of petitioner cannot be rejected only on the ground that expert witness was not examined to prove negligence of Doctor. It is not required to have expert evidence in all cases of Medical negligence".

10. The Revision Petition is without merit and the same is therefore, dismissed.

