
(1992) 11 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

VAGHRI GOPALBHAI MASHABHAI

APPELLANT

Vs

PARMAR NAVALBEN BALABHAI

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Citation : 1993 2 CPJ 1038

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant is the husband of deceased Baluben who is alleged to have expired on account of the negligence of nurse Parmar Navalben Balabhai at Primary Health Center, Nana and Dr. Kanchanlal Shah, Owner of Ashirwad Surgical and Maternity Hospital, Harij.

2. THE short facts that lead to this complaint are as under : THE wife of the complainant Baluben Gopalbhai was pregnant and delivered one child at Village Overawed in her residence in presence of 2 "dais". After the delivery of one child, it appeared to the Dais that there was a second child in the womb which could not be delivered for a long time and, therefore, the husband was advised to take the wife to Nana where the Primary Health Center was situated. In the early morning Bahiben was transported to Nana by camel cart. She was treated at Nana by Navalben and Dr. Vaghela whose certificate is produced at Annexure-1. Though the complainant has made several allegations against Navalben, it appears from the certificate that the patient was brought to the Primary Health Center, Nana at 7.30 a.m. on 6.12.91 with history of twin child, first delivered at home at about 12 midnight on 5.12.91 and second child hands and shoulder prolapsed, cold body and bleeding p.v. the condition of the patient was noted by Dr. Waghela. THE patient was thereafter taken to Ashirwad Surgical and Maternity Hospital at Harij which is situated at about 16 kms. from Nana by jeep which was provided by the Primary Health Center. From the case papers it appears that the patient was admitted in the Ashirwad Hospital at about 9.30 a.m. on 6.12.91. But the condition of the patient having found to be very serious

requiring blood, doctors advised to take her to Patan Hospital where blood can be made available. It appears that when the patient was taken to jeep from the hospital, she died in the jeep and allegation has been made that inspite of the fact that Dr. Kanchan Lal had recovered Rs. 2800/- by way of fees, he remained negligent in treating the patient resulting into the death of the patient. Both Navalben and Dr. Kanchanlal have filed written statements and denied the wild allegations made by the complainant.

Considering the seriousness of the allegations made by the complainant, we permitted the parties to cross-examine the witnesses. The complainant has been cross-examined by Mr. Mehta the learned Advocate of the opposite party No. 2 and Dr. Kanchan Lal Shah has been cross-examined by Mr. Mahendra Kumar, the power of attorney holder at length. Considering the facts and circumstances, we have put certain questions to Dr. Kanchanlal.

3. THE question that arises in this complaint is as to whether (1) Smt. Navalben, who is alleged to be nurse is nothing but Ayah was negligent in treating the patient which has ultimately resulted into the death; (2) Dr. Kanchanlal Shah was negligent in treating the patient when it is alleged that he was paid Rs. 2800/- by way of fees and; (3) fees has been paid to Dr. Kanchanlal Shah, as alleged. We may make it clear that the burden to prove that the patient died on account of negligence of Opposite Party No. 1 or 2 lies upon the complainant in view of clear wording of Section 14 (1)(d) of the Consumer Protection Act. A consumer has, therefore, to prove two things - (1) that he has hired the services of the opposite party for consideration; (2) that the consumer has suffered loss or injury due to negligence of the opposite party. In the instant case it has been proved beyond doubt that Baluben had delivered one child at 12 midnight and she was not attended by any qualified person but was attended by two "Dais" who had no academic qualification but had experience. The evidence of one of the Dais" has been recorded who has stated that she found another child in the womb and the condition of the patient became serious and the child could not come out for a very long time and, therefore, they advised the complainant that she should be removed to the Primary Health Center as early as possible. There is also in the evidence that both the "Dais" tried by usual way known as "calla" i.e. by giving pressure downwards so that the second child can out with little force. However, that having been failed, there was no alternative except to take her for better medical treatment.

4. AS usual, no vehicle was available and the complainant could manage to get camel cart early in the morning. The distance from village Vejavada to Nana was about 4 kms. It appears that they have reached in the morning between 7 and 7.30 a.m. to the Primary Health Center where an injection was given. The shoulder and hands of the child came out and Dr. Waghela appears to have noticed that the case was serious and might endanger the life of the patient also. A brief note has been taken which leads to the conclusion that the condition was serious, patient was restless, there was profuse bleeding p.v. resulting into

anemia etc. Unfortunately, Dr. Vaghela has not been examined by the complainant which could have given the correct picture of the condition of the patient. The complainant has alleged that Navalben had given an injection. However, the note states that injection for tetanus c.c. was given. Even if the injection was given by opponent No. 1 at the instruction of the doctor, it has not resulted into the death of the patient because the injection was T.T. and the patient has not alleged to have been died on account of reaction of the T.T. injection. It appears that not only the Primary Health Center treated the patient but they also gave a jeep to carry the patient to Harij which was at a distance of 14 kms. and Navalben had also accompanied the patient. The patient reached Ashirvad Hospital at about 9.30 a.m. The doctor has been cross-examine at length by the power of attorney holder of the complainant. The doctor has produced the history which shows that the patient when admitted as indoor patient with the complaint of hands and shoulder prolapsed of second twin. On examination, he found the patient with severe anemia, tongue white, pulse not perceptible, blood pressure 60 mm. of Hg. and patient was in shock. As far as abdomen is concerned, uterus flabby, tenderness over lower uterine segment, foetal heart sounds were not located. So far vagina is concerned, externally profuse bleeding pervaginum was seen with hands and shoulder prolapse and part of back seen etc. The husband was immediately informed about the ruptured uterus and seriousness and condition of the patient. The husband was explained that multiple blood transfusions and exploration was required and was advised to take the patient at a bigger Institute where the blood transfusion facility is available since there was no blood bank available in Harij. He has given some primary treatment which he has explained in oral evidence-3 bottles. Dextrose with inj. Syntocin on 1 unit in drip, inj. Methergin 1 amp. intravenous and 1 amp. intra muscular after delivery of 2nd twins etc. According to the doctor, the patient left hospital at 10.10 a.m. and at that time patient's pulse was not felt, blood pressure was about 60 mm. of Hg.

5. MR. Mahendra R. Thakar, the power of attorney holder of the complainant has tried hard and has put the direct question that the doctor has recovered Rs. 2800/- by way of fees and has not given any treatment except giving 3 bottles of dextrose to which the doctor has clearly denied. According to the opposite party No. 2 since the patient was very poor on a humanitarian ground he has given treatment so that if there is a chance, she may be able to reach the hospital at Patan. He has, therefore, not charged any fees except Rs. 20/- which was charged by his compounder for consultation or examination fees when she was admitted in the hospital.

6. IN support of his contention the complainant has given the affidavit of other persons who have supported the contention of the complainant. However, the complainant is notable to produce the receipt or the person as witness from whom he has borrowed the money in order to make the payment to the opposite party. IN such circumstances, it is very risky to rely upon the oral statement of the complainant or the witness who has accompanied the complainant especially

when the fact of receiving of fee has been denied. Even if the doctor has recovered any fees it makes no difference in-as-much as the complainant has also failed to prove that the opposite party No. 1 or 2 was negligent in treating the patient. There was no other patient in the hospital at that time. It is not alleged that the doctor has not attended the patient. If the doctor has attended the patient and if he has given three bottles of dextrose and the patient has actually delivered child at his efforts. No negligence can be inferred since neither the complainant nor any of the witnesses were capable of giving any opinion as to the treatment given by the doctor. The complainant has not examined any other qualified person who could give any opinion regarding the treatment given by the doctor. If the uterus is ruptured when she was examined by Dr. Vaghela. If the patient has travelled about 4 kms. in a camel cart and thereafter 16 kms. in jeep where the hands and shoulder of the other child were prolapsed and with profuse bleeding, the chances of survival were very less. This is not a case in which the operation was performed by the doctor where we can find any negligence. In a village like Harij, where there are no facilities available for blood transfusion, it was extremely risky to do any operation when the blood has already gone out and the patient was anemic. We do not find any negligence committed by the opposite party No. 2 in the facts and circumstances of the case. We therefore are of the opinion that the complainant has miserably failed to prove that the opposite party No. 2 was negligent in treating the patient.

It may be noted that in the distant village where the modern facilities are not available and the doctors have to treat the patient, with available means and resources, if the wild allegation of negligence are made, time will come when no doctor will take the patients in the hospital even if they are serious and will hesitate to give even primary treatment and thereby expose himself to wild allegations, negligence and dragged into the Court. In the circumstances stated above, we do not find any negligence committed either by the opposite party No. 1 or opposite party No. 2 in treating the deceased. We are, therefore, of the opinion that the complaint deserves to be dismissed. Considering the weak financial position of the complainant, we do not award any cost. ORDER The complaint is dismissed. In the circumstances there will be no order as to costs. Complaint dismissed