

(2005) 12 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

VANDANABEN KHUSHALDAS ASWANI

APPELLANT

Vs

CHANDRASHEKHAR M. NARECHANIA

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Citation : 2006 1 CPJ 548

Hon'ble Judges : M.S.Parikh , Jatin P.Vaidya J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal arises as a result of order of Consumer Disputes Redressal Forum, Gandhinagar, in Complaint No. 165/2003, complaint having been dismissed by order dated 24.11.2005.

2. THIS was a complaint alleging medical negligence against respondent doctors and Insurance Company. Complaint inter alia states that one Vandanaben Khushaldas Aswani was taken to opponent doctors on 23.2.2003 at Hemant Hospital and Maternity Home Kalol for delivery at the end of pregnancy. THIS was 5th pregnancy (other four were done at the same hospital without any problems in previous years). After due conservative treatment cesarean section was advised in early hours of 24.2.2003, when son was delivered but the condition of mother was stated to be serious and had needed 14 units of blood over a period of night. Patient was shifted to Shrey Hospital for further management, where she was operated by Dr. Ameet Kapadia, hysterectomy was done and as alleged 7.5. litres of blood was removed from within abdomen. Patient underwent further treatment at said hospital and was discharged on 21.3.2003. As per allegation uterus was perforated and blood vessels were torn. Patient had cardiac arrest alleged to be because of blood loss, cardiac arrest was revived. Because of various sufferings complainant asked for compensation of Rs. 6,75,000 for alleged medical negligence and other causes mentioned in the complaint. Opponent doctors had filed reply denying all the allegations of complaints and asserted non-admissibility of complaint, etc. Doctors further stated the precautions that they took and care that they gave. Patient had

cardiac arrest and was revived soon. It is also admitted further that sonography was done and further surgery was advised which was refused by complainant. It is important to note that after first surgery patient was conscious and well. Even during surgery, as far as operation was concerned there was no problem. The mentioned cardiac arrest had no deleterious effect on complainant's health. Patient was offered another surgery on sonography report which was not agreed upon by complainant and had opted to be shifted to Shrey Hospital.

The Insurance Company had adopted the reply of the opponents. The rejoinders were filed and both parties repeated their stand. Opponents have filed various documents with their reply. Complainant, and Dr. Ameet Kapadia, were examined as witnesses. The case was for arguments when application for cross-examination of opponent was asked for and it was ordered by Forum that it could be decided after hearing arguments and necessary orders would be passed.

3. NOW in present appeal main contentions of applicant are: (1) There is medical negligence; (2) complainants were not permitted to cross-examine opponents; (3) The Forum has given judgment which is unsustainable in law, evidences are not properly appreciated - both oral and documentary; (4) The complaint is based on principle of "res ipsa loquitur".

We have heard the learned Advocates in detail. Perused documents. Now, as far as allegation of medical negligence is concerned, from the available documents, evidences and enclosures they have not shown any evidence of negligence as rightly described by learned Forum. We have also perused the documents; The complainant has not proved (a) uterus was perforated (b) blood vessels were torn. On the contrary complainants' own witness and that of their doctor Dr. Ameet Kapadia at Anx. E Exh. 6, and complainant's cross at Exh. 1 in Forum's documents clearly negate the claim. The documents further show that patient had developed condition known as D.I.C. (Blood Coagulation problem/disorder) which is not the result of opponent doctors' treatment or operation. It is also brought to our notice that because of above condition Dr. Ameet Kapadia also had to do another operation for clot removal (after his first operation). Further the same Dr. Ameet Kapadia states in his evidence (Exh. 42 of Forum) that the opponent doctors have given correct and adequate treatment, he also does not agree that uterus was perforated or blood vessels were torn. He also states that 7.5 litres of blood clot removed by him contained not only blood, but saline used for irrigation etc., even sonography got done by Dr. Kapadia refutes the amount as 7.5 and he confirms that statement in his evidence. The principle of "res ipsa loquitur", therefore, does not apply here. Thus complainant's own witness and documents and their documents clearly exonerate the opponent doctors of charge of negligence.

4. REGARDING not permitting cross-examination of opponent doctors, the learned Forum has given detailed reasoning. We have also asked complainant's Advocate to justify his demands, sadly he has not been able to give any cogent reasons for the same. This is all the more reason, when adequate documents are

on record, produced by complainant, that decision taken by learned Forum was proper. Further, in summary procedure where adequate-nay-sufficient reliable, repeatedly provable evidences are on record the cross-examination will not have any effect whatsoever on the merits of case. Besides, such a cross-examination would amount to searching one and, if permitted, would cause prejudice to the cause of justice. We, therefore, have no reason to take view other than what the Forum has taken. Contention that judgment of Forum is based on unsustainability in law or that evidences are not properly appreciated does not stand in view of details mentioned in the said judgment. On our perusal of documents and having heard the learned Advocates, we find that the same is just, proper and in accordance with law. Complainant having failed to prove the allegations against opponent doctors, there is no alternative except to maintain the judgment of District Forum Gandhinagar in Complaint No. 165/2003. The appeal, therefore, deserves to be dismissed. This appeal is dismissed looking to circumstances and facts of the case. There will be no order as to the cost. Appeal dismissed.