

(2001) 04 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

VIJAYAMMA

APPELLANT

Vs

APOLLO DIAGNOSTIC CENTRE

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Citation : 2002 1 CPJ 230

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshman J.

Final Decision : Complaint allowed

Judgement

1. THE 1st complainant is the wife, 2 to 5 complainants are sons and daughter while the 6th complainant is the mother of late M.S. Srinivas who died on the intervening night of 18/19.10.1993 at the 1st opposite party Diagnostic Centre due to the negligence of the third opposite party. If we go into the details, the case of the complainants is that late Srinivas, working as Physical Director in Alia Govt. Junior College, Hyderabad complained of breathlessness, following his complaint he was rushed to the 1st opposite party centre for treatment at about 12.30 a.m. on the intervening night of 18/19.10.1993 where the third opposite party was the duty doctor. THE complainant No. 1 requested the duty doctor to attend on the patient immediately and relieve him from breathlessness, but the latter did not evince any attention and asked them to wait. On further requests she merely checked the B.P. of the patient after 15 minutes and went away assuring that everything is normal. But as the deceased was suffering from severe breathlessness the first complainant again requested the third opposite party to provide oxygen and administer life saving medicines or other emergency medical care. Even then the third opposite party did not attend on the patient for more than 45 minutes. THE deceased also requested her to relieve him from breathlessness. Not only the deceased but also other persons who were attending on the deceased made similar requests. After 45 minutes the third opposite party tried to fix a device to provide oxygen, but by about 1.30 a.m. the deceased breathed his last and the third opposite party declared the patient dead and ran away from the hospital. THE complainants came under serious shock in view of the sudden and untimely demise of Srinivas, took the dead body from the

hospital without insisting for discharge card and as such there is deficiency in service.

2. AS the deceased was working as Physical Director drawing a salary of Rs. 5,500/-, they claimed a compensation of Rs. 10 lakhs. A legal notice dated 29.11.1993 was issued for which the opposite parties issued a contentious reply. Hence the complaint. In the version filed by the opposite party the fact that late Srinivas was brought to the second opposite party centre on the midnight of 18.10.1993 and he was admitted at 12.10 a.m. on 19.10.1993 with the complaint of acute breathlessness for half an hour before the patient was brought to the hospital was admitted. It is also not denied that the third opposite party was the duty doctor at that time. But it is stated that the patient was known diabetic, he was feeling uneasy since morning, and on examination it was found that the patient developed cold extremities (CYANOSIS) with the B.P. recording abnormally low at 90. The heart beat was feeble and there was lot of fluid in the lungs due to irregular functioning of the heart. It is further stated that the condition of the patient was so serious that even an urgent ECG could not be taken. The third opposite party did her best to save the patient in such a condition by administering oxygen inhalation apart from certain essential injections and medicines. The duty doctor took certain emergency measures such as cardiac massage, providing Ambu Bag respiration apart from giving intra cardiac adrenaline and Decadron injection. Unfortunately none of these measures saved the patient and he was declared dead at 12.30 a.m. Therefore, there is no negligence on the part of the opposite parties. The complainants examined 2 witnesses including the first complainant as P.W. 1 besides marking Exs. A1 and A2. The opposite parties filed an affidavit of third opposite party in lieu of chief examination. They also filed the affidavit of one Dr. Krishnam Raju, Cardiologist of 22 years standing. But they were not tendered for cross - examination. Infact a memo was filed on 15.7.1999 stating that the opposite parties would examine the third opposite party as D.W. 1 and Dr. Ananth Kumar as D.W. 2. But finally none of them was made available for cross-examination. The effect of the affidavit evidence filed by the third opposite party in lieu of chief examination will be examined a little later.

The point for consideration therefore is, whether there is any negligence on the part of the opposite party while the deceased Srinivas was in the 1st opposite party's centre either in diagnosing the disease or treating the same. If so, to what relief. Late Srinivas was admitted in the first opposite party centre on the intervening night of 18/19.10.1993 around mid-night as he was suffering from breathlessness is not disputed. It is also not disputed that the third opposite party was the duty doctor at that time. The dispute is, whether the deceased was attended promptly or whether there is any negligence in attending on him or commencing the treatment. The complainants assert that except checking the B.P. nothing else was done by the third opposite party for about 45 minutes, while the third opposite party asserts that not only the B.P. was recorded but also several resuscitative measures were applied including cardiac massage, providing

Ambu Bag respiration apart from giving Intra Cardiac Adrenaline and Decadron. In view of the denial of the opposite parties it is to be seen whether the complainants have established their version.

3. THE complainants have issued a registered notice under Ex. A1 dated 29.11.1993 which is the earliest version of their case. It is almost replica of the complaint. It is stated in the notice that the third opposite party refused to issue a discharge card and ran away from the hospital. In the reply Ex. A2 it is not denied that the third opposite party refused to issue a discharge card or that she ran away after declaring the patient dead. But a reference is made to a complaint given by the opposite parties before the police that the complainants behaved in an indecent manner after the death of the patient and had even assaulted the third opposite party. Even in the version filed by the opposite parties in this Commission there is no denial of the fact of refusal to issue a discharge card or that the third opposite party ran away from the hospital after making a declaration about the death. From this we are constrained to hold that some unhappiness was expressed by the complainants about the care taken by the opposite parties and even when a discharge card was demanded it was refused. Even though there is no denial about the fact that the third opposite party ran away, but it is asserted by the opposite parties that she was assaulted by the complainants. THEREfore, even though it cannot be definitely taken that the third opposite party has run away but there is no impediment to hold in the absence of any denial either in the reply notice or in the written version that when the discharge card was demanded it was refused by the third opposite party. This aspect assumes importance in examining the binding effect of Ex. B1, the original case sheet which was filed into the Commission on 16.11.1999 i.e. 5 years after the complaint was filed. THE fact remains that it was not filed along with the written version filed by the opposite parties, but was filed 2 years after the written version. The thrust of the complainants is that the third opposite party did not evince any interest even though the deceased was suffering from severe breathlessness except checking his B.P. that too 15 minutes after admission of the patient. According to them they requested the third opposite party to provide oxygen and also administer life saving medicines, but the third opposite party carelessly did not attend to the patient for more than 45 minutes and finally she declared him dead 45 minutes after the patient was joined. When she was trying to put the device to provide oxygen the deceased breathed his last. No injections were given, not even saline was administered.

4. WE have to see how far this version is substantiated. P.W. 2 who was examined on behalf of the complainants stated in her affidavit filed in lieu of chief examination that the third opposite party came after repeated persuasions by the complainants and tried to administer some medicines. Though she maintained that the third opposite party was reckless, but still she admits that she tried to administer some medicines. In view of this admitted premise we cannot hold that the third opposite party did not try to administer any medicines. Therefore, the complainants failed to prove this part of their case. Still the

question is, whether there was negligence on the part of the third opposite party. As already seen although an allegation is made in the notice Ex. A1 dated 29.11.1993 the earliest version of the complainants that the third opposite party refused to issue discharge card and ran away from the hospital, as there is no denial either in the reply notice Ex. A2 or in the written version filed by her it can be safely taken that the third opposite party refused to issue the discharge card of the patient immediately after the death of the patient. This in our view is deficiency on the part of the opposite parties. Added to that the original case sheet Ex. B1 was not filed along with the written version, but was filed only on 16.11.1999 after a period of 5 years after the filing of the complaint. It was not filed along with the written version but filed with a delay of 2 years thereafter. This failure on the part of the opposite parties to file the case sheet at the earliest point of time also lends support to the case of the complainants that the third opposite party refused to issue the discharge card after the death of the patient and as such this conduct on the part of the opposite parties amounts to deficiency. Although the first complainant as well as P.W. 2, an independent witness are examined on the side of the complainants in support of their case the opposite parties did not examine anybody including the third opposite party. In fact a memo was filed as early as on 15.7.1999 that the third opposite party and one Dr. Ananatha Kumar would be examined on their side. But for the reasons best known to them the opposite party did not examine those witnesses. Of course we are conscious merely because the opposite parties did not come into the box, it does not automatically follow that the version of the complainants is proved in the absence of sufficient material. But the fact remains that certain disputed facts which are within the knowledge of the third opposite party should be brought to the notice of the Court. Nodoubt for this purpose an affidavit evidence in lieu of chief examination was filed by the third opposite party but unless the said evidence in chief examination is tested in cross-examination it cannot be accepted. Therefore, the version in the affidavit or in the counter is not proved. Apart from that when there are serious allegations that the third opposite party has not taken enough care nor provided any medical aid to the patient while he was struggling for his life she would be well advised to depose her version so that the Commission can better understand the real controversy between the parties and assess the situation to find out whether there was negligence on her part or not. She has failed to render assistance to the Commission. Therefore, the fact remains that the complainants' contention that oxygen was not provided, ECG was not taken, saline was not given and similar other deficiencies prima facie appear to be genuine deficiencies and remain without being cleared by adducing sufficient evidence on their part. No doubt it is stated that the condition of the patient was serious and as such urgent ECG could not be taken. This version in the counter filed by the opposite parties means that ECG was a procedure which requires to be done for such patients but the condition of the patient did not permit the third opposite party to take ECG. What was the condition of the patient that prevented her from taking ECG which only takes 5 to 10 minutes could have been explained by her. Her failure to

adduce evidence on this vital aspect to satisfy the Court that there is no negligence on this account only leads us to believe that there is deficiency on her part in not even taking ECG to assess the condition of the patient, which is a deficiency. For these reasons though we cannot come to the conclusion that there was total negligence on the part of the third opposite party in treating the patient or administering medicines but still there are deficiencies on her part like not issuing the discharge card after the death of the patient when asked, not taking ECG which is a necessary procedure. Nodoubt Dr. P. Krishnam Raju who is M.D., D.M. (Card.) filed 3rd party affidavit stating that he has gone through the case sheet and found that the treatment given and the medicines administered as mentioned in the case sheet are quite appropriate. We are not doubting the view expressed by him. But as already seen the deficiency is in the failure to issue discharge card and taking E.C.G. etc. The discharge card basing on which the opinion is expressed has not seen the light of the day for over 5 years after the death of the patient. Therefore, the evidentiary value of such a summary is very weak. As such the opinion expressed on the basis of such a card may not be of much help to the complainant.

5. HAVING come to the conclusion that there is deficiency in service on the part of the third opposite party the next question is, whether the opposite parties 2 and 3 are also jointly and severally liable for the same. It is stated in the complaint that the first opposite party is a corporate hospital of which the second opposite party is a branch in which the third opposite party was the duty doctor at the relevant time. As such all the three opposite parties are jointly and severally liable for the proven negligence on the part of the third opposite party.

6. THE next question is, what is the compensation that the complainants are entitled to. According to the complainants the deceased was aged about 50 years working as Physical Director in a Junior College drawing a salary of Rs. 5,500/- at the time of his death. But there is no proof about what he was earning. THERE is also no denial in the counter filed by the opposite parties about the fact that he was working as Physical Director or he was earning a sum of Rs. 5,500/- p.m. As we have held that there is no sufficient proof to accept the version of the complainants that the third opposite party neglected to examine the patient, administered the drugs or take any interest in providing aid to him. But still we hold that there was negligence on the part of the opposite parties on other aspects. We are of the view that they are not eventually responsible for the death of late Srinivas, still as there is negligence to some extent we are of the opinion that a sum of Rs. 50,000/- by way of compensation would meet the ends of justice. We accordingly direct the opposite parties jointly and severally to pay a sum of Rs. 50,000/- with interest at 12% p.a. from the date of death of late Srinivas i.e. 19.3.1993 till the date of payment. Time for payment 6 weeks. Complaint allowed.