IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 01.04.2016
Date of Hearing: 08.01.2024
Date of Decision: 26.11.2024

FIRST APPEAL NO. 203/2016

IN THE MATTER OF

MR. SHIV KUMAR CHANDAK,
S/O SH. MAKHAN LAL,
R/O A-69, IST FLOOR,
RAMPRASTHA COLONY, GHAZIABAD (UP).

(Through Mr. M.Y.Khan, Advocates)
…..Appellant

Versus

1. FORTIS HOSPITAL,
B-22, SECTOR-62, NOIDA, UP 201301.
REGD. OFFICE PIACADILY HOUSE,
275-276 (4TH FLOOR), CAPTAIN GAUR MARG,
SRINIWASPURI, NEW DELHI.

2. DR. YOGESH AGGARWAL,
C/O FORTIS HOSPITAL,
B-22, SECTOR-62,
NOIDA, UP 201301.

(Through Ms. M. Malika Chandhuri, Advocates)
…..Respondents

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)
HON'BLE MR. J.P.AGRAWAL, MEMBER, (GENERAL)

Present: Appellant in person along with Mr. M.Y. Khan, counsel for the Appellant.
Ms. M. Malika Chandhuri, counsel for the Respondents

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The brief facts necessary for the adjudication of the present appeal as per the District Commission record are :

> *"In the case of medical negligence it is the duty of the complainant to prove the act of medical negligency on the part of the treating Doctor/Physician/Hospital. Unless and until this fact is proved the Doctor/Physician/Hospital cannot be held guilty of medical negligence. Medical negligence can be proved by placing unimpeachable facts on the record from a combined reading of which the court/forum may come to irresistible conclusion that it is a case of medical negligence. However, the best mode of proving the medical negligence is to send the patient (if alive) and/or his/he medical treatment papers in respect of the medical treatment received by him/her from the alleged delinquent treating Doctor/Physician/Hospital to some Government*

Hospital of high reputation and to seek a medical expert opinion regarding the efficaciousness of the treatment given to the patient by the alleged delinquent hospital.

In the present case, the complainant has filed the present complaint by pleading medical negligence on the part of OP-1 Hospital and OP-2, the treating doctor, in providing medical treatment to his wife between 15.10.06 to 11.11.06 due to which his wife died. According to the complainant, he is entitled to the damages of 8 lacs for loss of his wife causing mental agony and tension to him and his entire family members and to bear all the expenses of the medical treatment on her wife. Hence, this complaint.

In the written statement, OPs have inter-alia stated that world wide well accepted medical treatment had been provided to the wife of the complainant and there was no medical negligency on their part.

Complainant has filed his own affidavit in evidence. On the other hand, affidavit of Sh. Sukhmeet Singh Sandhu, Zonal Director of OP-1 has been filed in evidence.

Written arguments have been filed on behalf of the parties.

2. The District Commission after taking into consideration the material on record, passed the following order dated 15.01.2016:

> *"We have heard the complainant in person and have also carefully gone through the record.*
>
> *We do not want to burden our order with lengthy discussion. Our predecessors had sent all relevant medical papers in respect to the treatment provided to the wife of the complainant by the OPs to the Medical Supdt., Safdarjung Hospital, New Delhi. Medical expert opinion report was sent to this forum vide letter No. 2-11/07- Coordn. (Pt.II) dated 23.4.2010. From a perusal of the said medical expert opinion, it becomes clear that there was no medical negligence in providing medical treatment to the wife of the complainant in OP-1 Hospital by OP-2. Therefore, we hold that no case of medical negligence has been made out. Accordingly, we dismiss the complaint with no order as to costs.*
>
> *Let a copy of this order be sent to the parties as per regulation 21 of the Consumer Protection Regulations. Thereafter file be consigned to record room.*
> *Announced on 15.01.16."*

3. Aggrieved by the aforesaid decision of the District Commission, the Appellant has preferred the present Appeal contending that District

Commission has passed the Impugned Order in absolute ignorance of the Expert Opinion obtained from the Medical Board at Safdarjung Hospital. ***Secondly***, it is submitted that the District Commission failed to observe that the treating doctors of the Respondent-hospital have made submissions contrary to the review of the Three Slides done by the G.B Pant Hospital, which showed Adenocarcinoma. ***Thirdly***, it is submitted that the treating doctors of the Respondent-Hospital failed to diagnose the existence of Adenocarcinoma and considerable time was wasted in diagnosing the disease, ultimately leading to the death of the patient. ***Lastly***, it is submitted that the treating doctors kept on suggesting various treatments, which were non-specific to the condition of the patient. Since the doctors failed at diagnosing the actual disease, treatment specific to the condition of the patient could not be given and as such the Respondents are liable for medical negligence. Pressing the aforesaid contentions, the Appellants have prayed that the Impugned Order be set aside.

4. Respondent No.1 has filed the Reply to the Appeal and has stated therein that the Appellant has based his entire case upon the misplaced belief that the diagnosis of the patient and treatment by the Respondents was not correct. It is further submitted that the Appellant has merely created a case from the subsequent treatment given by GB Pant Hospital. ***Secondly***, it is submitted that the Appellant has failed to state even a single instance of negligence or deficiency, and has also failed to provide any necessary medical literature to substantiate the case made out by him. ***Thirdly***, it is submitted that the doctors at the GB Pant hospital have not been made a party to this litigation. Hence, Appellant's entire case hinges upon his belief that the treatment was incorrect, and is not supported

by any cogent reasoning or medical fact. ***Lastly***, it is submitted that there was no delay of diagnosis, whatsoever, by the Doctor and/or the Hospital in diagnosis of cancer in the patient. It is submitted that on initial examination there was a suspicion of cancer, complete pre operative work up was done, due care was taken at the time of surgery. Naked eye observation during surgery also revealed no traces of cancer. Therefore, no deficiency or negligence can be attributed to the Respondent no.1. Pressing the aforesaid contentions, the Respondent has prayed to dismiss the appeal with heavy costs.

5. Respondent No.2 has filed its reply to the present appeal and has stated therein that the Appeal is based on false and misconceived facts and the Appellant has failed to disclose any cogent or sufficient ground for setting aside the order under challenge. ***Secondly***, it is submitted that the patient saw Respondent No. 2 at the Hospital with the report which revealed no abnormality, hence she was advised symptomatic medication. ***Thirdly***, it is submitted that at all stages the Respondent No. 2 abided by the protocols or treating patients with a gall bladder disease. The patient underwent an Ultrasound, MRI, CT scan of the liver, gall bladder and abdomen at pre-operative and post operative stages of her treatment, which revealed no evidence whatsoever of Cancer. The naked eye observation of the liver and abdomen done at the time of surgery by Respondent No. 2 revealed no presence of Cancer. ***Lastly***, it is submitted that there was no delay of diagnosis, whatsoever, by the Doctor and/or the Hospital in diagnosis of cancer in the patient. Therefore, it is submitted that no negligence can be attributed to the Respondent No.2 as such, and the appeal is liable to be dismissed with heavy costs.

6. We have perused the material available on record and heard the counsels for the parties.

7. The ***only question*** that falls for our consideration is ***whether the District Commission failed to assess the Expert Medical Report in view of the established precedents and whether the conduct of the Respondents amounts to medical negligence.***

8. In this regard, we deem it appropriate to refer to the latest decision of the Hon'ble National Commission in ***Revision Petition No. 1353 of 2022 titled Chief Medical Officer Nehru Satabdi vs Puja Sahu decided on 16 August, 2024, wherein it was held:***

> "*13. It is pertinent to note that in matters of medical negligence, the expert evidence plays a vital role in determining the negligence, if any. This was observed by Hon'ble Supreme Court in SK Jhunjhunwala v. Dhanwanti Kau & Anr., (2019) 2 SCC 282, decided on 01.10.2018."*

9. Furthermore, the Hon'ble Apex Court in the ***Martin F. D' Souza vs Mohd. Ishfaq IR 2009 SUPREME COURT 2049, observed as follows:***

> *"123. The courts and Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists. It is true that the medical profession has to an extent become commercialized and there are many doctors who depart from their Hippocratic oath for their selfish ends of making money. However, the entire medical fraternity*

cannot be blamed or branded as lacking in integrity or competence just because of some bad apples."

10. A perusal of the aforesaid decisions makes it clear that expert opinion plays a crucial role in adjudication cases of medical negligence cases as Consumer Commissions are not experts in medical science, and must not substitute their own views over that of specialists. However, a perusal of the Impugned Order mentions that no negligence has been carved out by the Medical Board in the Expert Opinion Report. It appears that the District Commission has mechanically passed the Impugned Order without appreciating the Expert Opinion, which is crucial to reach the conclusion whether the Respondents are liable for medical negligence
11. It is noteworthy that when any medical negligence is alleged, whether it pertains to pre or post-operative medical care or to the follow-up care at any point in time at the hands of the treating doctors, it is always apposite to take note of the constituents of negligence and the exposition of law as laid down by the Hon'ble Apex Court in ***Jacob Mathew v. State of Punjab and Anr*** (***2005) 6 SCC 1*** *as:*

"*The test for determining medical negligence as laid down in Bolam case [(1957) 2 All ER 118 (QBD), WLR at p. 586] holds good in its applicability in India.*

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24. The term "negligence" has been defined in Halsbury Laws of England (Fourth Edition) para 34 and as settled

in Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others as under:

"45. According to Halsbury's Laws of England, 4th Edn., Vol. 26 pp. 17-18, the definition of negligence is as under:

"22. Negligence.—Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient."

12. What is to be gleaned from the aforesaid decision is that to establish a claim for medical negligence, it is imperative to meet the following criterion i.e. **firstly**, the patient was owed a duty of care. **Secondly,** that duty was breached by a deviation from accepted standards of care. **Thirdly**, the patient suffered damages and **fourthly,** the damages suffered were a direct result of the medical provider's breach of duty.
13. At this juncture, we deem it appropriate to refer to the Expert Opinion provided by the Board of Medical Experts at Safdarjung Hospital *(annexed as Annexure A-4 at pg 60-62 alongwith the Appeal),* relevant extract reproduced hereunder for ready reference:

"OBSERVATIONS
1. On 11-11-06 Diagnosis of cancer not done
2. On 15-01-07, USGM was adv. by doctor of Fortis. Not done. Early USGM would have diagnosed missed disease early.

3. CT Scan adv. On 08-03-07 and 12-03-07 but undertaken on 26-04-07. Early CT Scan would have diagnosed missed disease early.

4. First possibility of tumor raised on 09-04-07 but diagnosis of cancer confirmed on 21-05-07. After 15-01-07 Slides of initial surgery done in recent past not reviewed by any one till 04-06-07 by GB Pant Hospital. Early review of slides would have lead to diagnosis of missed disease early.

Comments:-

1. "Non diagnosis of cancer on 11.11.06, lead to at least two months delay (That is till 15.01.2007) in diagnosis of cancer.

2. From 15.01.2007 (When USGM was adv.) to 21.05.2007-Four months delay in radiological investigations and review of slides lead to delay in diagnosis of cancer suspicion of cancer on radiological investigations prompts clinicians to review old investigations.

3. Gall Bladder cancer is a bad cancer with poor prognosis. Six months delay in diagnosis allowed the disease to progress to advanced stage. Treatment at advanced stage is not associated with good results.

> *4. Unfavorable prognosis in this case is due to nature of disease and delay in diagnosis."*

14. A perusal of the aforesaid medical opinion makes it clear that firstly, Non-diagnosis of cancer on 11.11.06, lead to at least two months delay (That is till 15.01.2007) in diagnosis of cancer. Therefore, it is clear that the Medical Board after examining the facts and circumstances of the present case, reached a finding that the Respondents made a considerable delay of at least 2 months in diagnosing the condition of the patient.
15. Secondly, the Report divulges that *from* 15.01.2007 i.e. when USGM was advised to 21.05.2007- a four months delay in radiological investigations and review of slides lead to delay in diagnosis of cancer. It is further noteworthy that the report specifically mentions that upon suspicion of cancer on radiological investigations, as per standard medical protocol, the clinicians are prompted to review old investigations.
16. Thirdly, the report divulges that Gall Bladder cancer is a bad cancer with poor prognosis. The Report further concludes that considerable delay of six months in diagnosis allowed the disease to progress to advanced stage. Treatment at advanced stage is not associated with good results.
17. Fourthly, the report categorically contains a remark to the effect that "*Unfavorable prognosis in this case is due to nature of disease and delay in diagnosis."*
18. Here, it is pertinent to remark that on an extensive reading of the medical literature on the subject, it has come to our knowledge that as per the standard medical protocol, clinical observations need to re-evaluated in case radiological investigations reflect any signs of cancer, a cancerous tumor or other allied abnormalities. However,

in the present case, not only the Respondents failed to diagnose the disease but also did not re-evaluate or conduct fresh investigations after the suspicion of cancer, which amounts to patent negligence in our sight. It is worthwhile to mention here that the patient could not be given treatment specific to the condition of the Adenocarcinoma as the Respondents failed to identify the disease in the first place, and resultantly the line of treatment adopted by the Respondents was recurrently changed, leading to the progression of the disease to an advanced stage.

19. It is worthwhile to mention here that a person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the intended purpose. Adverting to the facts of the present case, it is crystal clear from the face of the record that on 11.11.2006 the patient underwent biopsy at Ranbaxy Satellite Laboratory at the Respondent-Hospital and its report dated 11.11.2006 confirmed that there is no malignancy either in Gall Bladder or in the liver tissues. On the other hand, when the patient was still not relieved, the Appellant consulted Dr. Bansal., Senior professor in surgery at All India Institute of Medical sciences (AIIMS) on 12.05.2007 on whose advise the biopsy was done at the department of pathology on 14.05.2207. It is abysmally surprising that the biopsy report dated 21.05.2007 revealed Adenocarcinoma. It is abysmally surprising that when the slides and blocks were obtained from the Respondent-hospital for review at GB Pant Hospital vide biopsy no. 3511 of 2007, the report dated 04.06.2007 mentioned the impression as *"Gall Bladder Slide and Blocks For Review- Adenocarcinoma Well Differentiated.*" It is implausible as to how the same slides did not reveal any malignancy earlier while the same slides revealed "well-differentiated cancer" in the review

at GB Pant hospital. The aforesaid glaring discrepancies in the diagnostic procedures create an avenue for raising an adverse inference against the Respondent-hospital, as regards to the duty of care towards the patient.

20. Here, it is pertinent to remark that cancer is a progressive disease and time is the essence in case of such progressive diseases. It is clear beyond doubt that the diseased progressed beyond control due to the negligence on part of the Respondents to review the clinical findings on suspicion of cancer, which is a deviation from the standard medical protocol.

21. Thus, in view of the aforesaid discussion, we opine that the District Commission failed to appreciate the Expert Opinion on record. We further opine that the Respondents were negligent in their conduct in view of the clear cut finding that considerable delay was made in conducting USGM and CT Scan and reviewing the slides on suspicion of cancer, thereby allowing the disease to advance to a lethal stage, leading to the poor prognosis and death of the patient.

22. Therefore, ***we allow the present Appeal and set aside the Impugned Order dated 15.01.2016 passed in CC-740/2008 by the District Consumer Disputes Redressal Commission, Udyog Sadan, C-22 & 23, Qutub Institutional Area (Behind Qutub Hotel), New Delhi-110016***. Consequently, the Respondents are hereby directed to:

    a) *jointly & severally pay a sum of Rs. 10,00,000/- to the Appellant as compensation towards death of the patient*

    b) *jointly & severally pay a sum of Rs.2,00,000/- to the Appellant as mental and physical agony caused to Appellant*

c) jointly & severally pay a sum of Rs. 50,000/- to the Appellant as litigation charges.

23. The Respondents are directed to comply with the directions as contained in para 22, within two months from the date of the present judgment i.e. on or before 26.01.2025, failing which the Respondents shall be liable to pay the entire sum along with simple interest at the rate 9% p.a. till the actual realization of the amount.
24. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
25. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
26. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

J.P. AGRAWAL
MEMBER (GENERAL)

Pronounced On:
26.11.2024

L.R.-G.P.K