DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, KASARAGOD

(Present: Sri. Krishnan K, President
Smt. Beena K G, Member)

Date of filing :07/02/2018
Date of Order:25/11/2025

CC.No.27/2018

1. K S Mathew,
S/o Scariya, aged 55 years

2. Thankamma Mathew, aged 51 years
W/o K S Mathew,
Both are residing at Kaniyanthara
House Irikkur Kallar, Panathady P O
Panathady, Vellarikundu Taluk,
Kasaragod District, Kerala.
Pin – 671532.
(Adv: M C Jose & Rajeev K) : Complainants

Vs

1. The Managing Director,
Arimala Hospital,
Near Railway Station
Kanhangad P O, Kanhangad Via,
Kasaragod District, Kerala.
Pin – 671315.

2. Dr. Jayaprakash P., Upadya M D, Surgeon
Arimala Hospital,
Near Railway Station
Kanhangad P O, Kanhangad via
Kasaragod District, Kerala.
Pin – 671315.

3. Dr. Sadiq, Anaesthesiologist,
Near Durga High School,
Kanhangad P O, Kanhangad via
Kasaragod District, Kerala.
Pin – 671315.
(Adv: Mahesh, for OP 1,2 & 3) : Opposite Parties

ORDER

By SRI. KRISHNAN K, PRESIDENT

The case of the complainants is that Jincy Mathew, aged 21 years is their son. He is mentally retarded person and also an Endosulfan victim. He suffered infection on his testicle. Consulted opposite party No. 2 doctor working in opposite party No. 1 hospital. The opposite party No. 2 advised immediate surgery or else his life is in risk. Complainant's agreed. The opposite party No. 3 is the anaesthetist gave anaesthesia. The opposite party No. 2 conducted the surgery on 04/03/2017. But patient did not regain consciousness thereafter. He was removed to Father Muller Hospital Mangalore on 05/03/2017, but victim breathed his last on 11/03/2017, their allegation is that Jincy Mahtew died due to medical negligence. The complaint is registered by Hosdurg Police. Inquest is made. Post Mortem is conducted by Professor, Pariyaram Medical College Hospital, Mr. Gopala Krishna PIllai on 13/03/2017, it is revealed that patient died due to anaesthetic complication involving respiratory system. Death of Jincy is due to medical negligence and also in doing surgery for being greed for money. Human Rights Commission directed the Medical Officer to constitute a Medical Board. Within three months, but no report is filed by Medical Board. They spend more than two lakh for medical expenses besides ambulance fare. Victim was the student of St. Joseph Special School, participating extracurricular activities, sufficient knowledge in computer, thus complainants are claiming two lakh as medical expenses, directing opposite party to pay Rs. 21,000/- as ambulance fare, rupees 15 lakhs towards compensation for deficiency in service and medical negligence causing death of their son Jincy.

For all opposite parties, Adv. Mahesh filed vakalath and written version. The opposite parties denied all the allegations in the complaint. The opposite parties say

that the complaint is ill framed, ill advised, filed for undue financial advantage. The opposite party admits that Jincy Mathew was taken for consultation with complaint of pain on right scrotum since 4 days clinical history explained by parents. It appears that parents told the doctor that Jincy Mathew was not on medication but not reported that he is an endosulfan victim. Patient underwent Doppler study of Scrotum and got a report showing right testicular torsion with early testicular Necrosis confirming clinical diagnosis and the only remedy is surgery. Right orchidectomy surgery is advised. The complainant No. 1 signed the consent form for surgery. Procedure is explained. But parents did not disclose endosulfan history pre-medication with injection anaesthesia was induced with Propofol 100 mg and accepted guidelines, that Anaesthesia was well maintained that surgery took forty minutes time, patient has un evenful recovery from Anaesthesia. Patient is shifted to post operative ward at 3.45 PM by close observation. On 05/03/2017, BP is maintained, opposite party No. 2 and 3 decided to shift the patient to Father Muller's Hospital Mangalore with oxygen support accompanied by experienced nursing staff. Patient died after six days. The opposite party followed standard and accepted medical practice exercised care and caution in the treatment, no negligence and no deficiency in service. Anaesthetist is MD qualified with 23 years experience. Amount claimed is exorbitant, without any substance, 2nd opposite party have MBBS MS General Surgery having 25 years experience in the field. Thus there is no medical negligence, deficiency in service and prayed to dismiss the complaint.

The complainant No. 1 filed chief affidavit, cross examined as PW1 and one witness examined as PW2. Ext. A1 to A9 and X1 marked. Ext. A1 is the copy of FIR, Ext. A2 is the post-mortem report dated 13/03/2017, copy of post-mortem report is Ext. A3 dated 11/04/2017, Ext. A4 is the treatment record, Ext. A5 is the copy of

disability certificate, Ext. A6 is the copy of the investigation officer report, Ext. A7 is the medical discharge bill for Rs. 85,081/-, copy of report by all provided their valuable service. Ext. A8 is series of bills, Ext. A9 is the certificate issued from school. The complainant filed memo with two documents. It is mentioned that it was decided to get expert opinion in the matter of death of Jincy Mathew.

The opposite party produced copy of post mortem report Ext. B1, B2 and B3. The opposite party No. 3, owner of hospital filed chief affidavit and cross examined as DW1. The opposite party and complainant filed argument notes.

Points for consideration are;

a) Whether the death of the patient was caused due to medical negligence or lack of due care on the part of opposite parties?
b) Whether proper consent and pre-operative evaluation were done before surgery?
c) Whether the anaesthetic complication amounts to deficiency in service under section 2(1)(g) of the Consumer Protection Act?
d) Whether expert medical opinion supports negligence?
e) Whether the compensation claimed is justified?

All the issues discussed together for convenience.

<u>The case of the complainants :</u>

- Complainant's son Jincy Mathew suffered from pain and swelling in the right scrotum.
- He was taken to opposite party No. 1 hospital where opposite party No. 2 (surgeon diagnosed testicular torsion with early necrosis through Doppler

study and advised immediate surgery (Right orchidectomy), warning that delay will endanger the life of the patient.

- Surgery was conducted on 04/03/2017 under the supervision of opposite party No. 3 (Anaesthetist) using Propofol 100 mg as induction.
- According to the complainants, the patient did not regain consciousness after surgery and was shifted to Father Muller's Hospital, Mangalore on 05/03/2017, there he died on 11/03/2017.
- A police case was registered, inquest and post mortem were conducted by Professor Gopalakrishna Pillai, Pariyaram Medical College on 13/03/2017.
- Post mortem report, stated cause of death as "Anaesthetic complication involving respiratory system".

Complainant's allegations :

- Medical negligence in administering anaesthesia and during surgery.
- The death was due to lack of proper care and negligence on the part of opposite parties.
- The surgery was undertaken for monetary gain, without due caution considering the victim's health condition.
- Despite the Human Rights Commission directing constitution of Medical Board to report within 3 moths, no report was submitted.
- Claimed to have spent Rs. 2,00,000/- for medical expense and Rs. 21,000/- ambulance charge.
- Claimed Rs. 15,00,000/- as compensation for deficiency in service and medical negligence causing death.

Opposite party's defence :

- The complaint is frivolous, ill-framed and filed for undue financial advantage.
- The parents concealed the fact that the patient was an Endosulfan victim and had neurological disability.
- The diagnosis of testicular torsion was confirmed clinically and radiologically – surgery was essential to save life.
- Proper consent was obtained (signed by the complainant).
- Anaesthesia was administered by following standard protocol and the surgery was unevenful lasting about 40 minutes.
- The patient initially recovered from Anaesthesia shifted to post operative ward at 3.4 PM and was under observation.
- When condition deteriorated, he was referred to Father Muller's Hospital with oxygen support and trained nurse.
- Both opposite party No. 2 (surgeon) and opposite party No. 3 (Anaesthetist) are qualified doctors with above 20 years of experience.
- The Apex Medical Board opinion later concluded "no gross or culpable negligence" on part of treating doctors.

The opposite party contends that there is no credible expert evidence proving that the Anaesthetist or surgeon acted contrary to accepted medical practice and considering the Apex Boards opinion exonerating the doctors, the allegation of medical negligence is not established, hence no deficiency in service is proved.

According to PW1, he was told by doctor Gopalakrishna Pillai, that patient did not regain consciousness due to over dose of anaesthesia given to the patient and also told him that due to insertion of endotracheal tubes the lungs were obstructed that these two reasons for the death of Jincy. He denied suggestion that endotracheal tube was removed as per advise of bystanders including him and he

suppressed it from the court. Suggestion is made that reason for death stated in Ext. A2 post mortem report are baseless and wrong, denied by PW1. PW1 also denied the suggestion that amount claimed is excessive.

Report of Apex body shows that it was of acute emergency present in a high risk case (Down's syndrome) they could have refer the patient to Father Muller's Hospital before surgery considering high risk nature of patient. On 04/03/2019 (may be mistake for 2017) at 9 PM diagnosis was written as mental retardation down syndrome with orchidectomy with cardio respiratory arrest. Ventilator discontinued on 06/03/2017 at 6.45 PM put on T piece ventilator declared the patient died on 11/03/2017 at 3.05 PM.

Nature of Expert opinion under section 45 of Evidence Act :

- An expert opinion (including that of a Medical Board or Apex Body Medial Council) is not binding on the court.
- It is advisory in nature – the court or consumer forum empowered independently evaluate it with other evidence.
- Courts have repeatedly held the expert opinion is only a piece of evidence and not conclusive proof.
- In Jacob Mathew Vs State of Punjab (2005) 6 SCC-1-Court held that expert opinion assists the court but does not bind it.
- In Martin F D'Souza Vs Mohol Ishfaq (2009) 3 SCC 1, while expert committee opinion is valuable, the court must see if it is reasoned and consistent with evidence.
- Kusum Sharma Vs Batra Hospital (2010) 3 SCC 480 – Expert report has persuasive value but not binding Force.

If Apex Body opinion is not supported by Reasons :

- An expert report without reasons or analysis loses much of its evidentiary value.
- Counter have held that mere conclusion like “no negligence found” cannot override factual or scientific evidence (post mortem, histopathology, etc.) unless reasons are shown.

Malay Kumar Gangully Vs Dr. Sukumar Mukherjee (2009) 9 SCC 221 – Supreme Court rejected the expert committee report that was unreasoned and contrary to medical evidence.

“An expert opinion which is unsupported by reasons and contrary to medical records cannot be relied upon blindly”.

The post mortem and Histopathology Evidence :

If the post mortem report and histopathological findings clearly record:

“Death due to anaesthetic complication involving respiratory system”, thus these are direct medical evidence pointing to possible negligence or error during anaesthesia or Peri-operative care”.

We consider it and treat such findings as primary medical evidence, than to a generalized or unreasoned Apex Body report.

- The commission prefer the post mortem doctor findings over the Apex Body opinion since it is better supported by facts and reasoning.
- Dr. Kunal Saha Vs AMRI Hospital (2014) ISK 384 - Hon’ble Supreme Court gave precedence to medical records and expert testimony supported by reasoning over official committee reports.

Apex Body say “No negligence” – but without reasons. Post mortem and histopathology shows “death due to anaesthetic complication involving respiratory system”.

The Apex Body report treated as on piece of evidence, but not conclusive proof: The post-mortem report dated 13/03/2017 opinion as to cause of death reserved pending histopathology report.

Nature of post mortem Evidence :

- A post mortem report prepared by a Government Forensic expert is a scientific document and a primary medical record admissible under section 45 of the Indian Evidence Act.
- It represents the objective medical opinion based on direct examination of the body and histopathological findings.
- Such evidence carriers high probative value, especially when it identifies a physio-logical cause of death linked to a medical procedure (eg: anaesthesia).
- State of Haryana V/s Bhagirath (1999) 5 SCC 96- Post mortem report is a valid and relevant piece of expert evidence.
- Maley Kumar Ganguly Vs Dr. Sukumar Mukherjee (2009) 9 SCC – Post mortem report and histopathology can be decisive where they directly indicate cause of death connected to treatment.

Anaesthesiology is a high risk specialty. The duty of a doctor is to explain to the patient what he intends to do and the implications of that action in a way, which a careful and responsible doctor would do, so that the consent given by the patient was, indeed, a real consent. This duty to disclose sufficiently the risk involved must depend largely on the circumstances in each case.

But in the case of deaf and dumb, he cannot give a valid consent.

Anaesthesia record itself should be accurate, complete and neat as possible. The record was not considered proper when previous history of the patient was not recorded.

In the present case, doctor says patient is a deaf and dump and endosulfan victim is not told by parent's relatives. It is not believable.

Since the patient is deaf and an endosulfan affected mentally disabled individual, enhanced anaesthetic precautions are mandatory, including, modified consent through guardian, detailed neurological and respiratory evaluation, seizure risk mitigation, adjusted dosing of anaesthetic drugs, enhanced intra-operative monitoring and prolonged, post-operative observations, special pain assessment tools for non-verbal patients and strict documentation of all additional steps from essential components of standard anaesthetic care.

- Meaning of "Anaesthetic complications involving Respiratory System".
- Death occurred during or soon after administration of anaesthesia.
- The respiratory function was compromised – eg. – airway obstruction, aspiration, drug reaction, or failure to monitor ventilation.

This typically points to peri-operative mismanagement and while not automatically negligence, it requires;

- Proper pre-anaesthetic evaluation:
- Administration of correct dosage and drug:
- Continuous monitoring of respiration and oxygen saturation;
- Immediate resuscitative response to complications.

Failure in any of these constitute deficiency in service under section 2(11) of Consumer Protection Act 2019 (or section 2(1)(g)of Consumer Protection Act 1986).

The complaints made out prima facie case that death occurred under Anaesthesia and the post mortem attributes to anaesthetic complications. Once that is shown the onus shifts to the hospital/anaesthetist (opposite party) to demonstrate.

- That all due precautions and standard protocols were followed;
- There was no deviation from accepted medical practice.

An unreasoned opinion of a Medical Board cannot override a reasoned and scientific post mortem findings.

Hence the post mortem and histopathological report became decisive indicators of the proximate cause of death. When the post mortem report expressly concludes: “Death due to anaesthetic complications involving respiratory system.”

The following legal consequences arise:

1) Caused link establishes; Death is medically connected to the anaesthetic procedure;
2) Prima facie inference of negligence; unless the opposite parties show that every reasonable precaution was taken and complications was unavoidable, negligence can be inferred.
3) Expert report not binding; Any contrary unreasoned Apex Body report is only advisory and cannot displace direct scientific evidence.
4) Consumer commission’s power: The commission can rely on the post mortem and histopathology to hold deficiency in service, applying ‘res ipsaloquitor’ where appropriate (the occurrence speaks for itself)

The post mortem report dated 13/03/2017 categorically opined that the cause of death of Jincy Mathew was due “anaesthetic complications involving the respiratory system”. The said opinion, being a contemporaneous Scientific finding supported by histopathological examination, carries high evidentiary value under section 45 of the Evidence Act. The Apex Body’s subsequent unreasoned observation that there was “no gross and culpable negligence” cannot override this direct and reasoned medical evidence. Once the cause of death is medically linked to anaesthetic complications, the burden shifts to the opposite parties to prove that all standard precautions were duly observed. In the absence of such proof, the inference of deficiency in service and medical negligence is sustainable.

Compensation in medical negligence cases is awarded under;

- Section 14(1)(d) of the Consumer Protection Act 1986 or section 39(10(d) of the 2019 Act:
- To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered due to the negligence of the opposite party”

This include;

- Pecuniary damages (actual financial loss-in case, dependency etc.)
- Non-pecuniary damages (mental agony, pain, loss of expectation of life etc.)

Dr. Balram Prasad V/s Kunal Saha (2014) 1 SCC 384 the court held;

- Compensation must be just, fairs and reasonable, not arbitrary or token.
- Courts may apply Motor Accident compensation principles (multiplies method) as a guide;

Multiplies method (used for youngest deceased victims)

Though not mandatory, consumer fora often apply the multiplies method (From Sarla verma Vs DTC (2009) 6 SCC 121 to estimate loss of dependency.

Deceased's monthly income (earning or expected) = 10,000,

Annual income = 1,20,000/- (national)

- Deduct personal expenses (1/2 as unmarried) = 60,000/-
- Multiplier for age 22 = 18 (as per Sarla varma) = Rs. 60,000×18

  = Rs. 10,80,000/- (loss of dependency

Add : loss of dependency, Rs. 10,80,000/-

Funeral/medical expense, Rs. 50,000/-

Pain and sufferings, Rs. 1,00,000/-

Interest @ 6% per annum from the date of complaint till realization, compensation for deficiency in service is fixed Rs. 1,00,000/-.

In the result complaint is allowed in part, opposite party No. 1 to 3 are jointly and severally directed to pay Rs. 13,30,000/- (Rupees Thirteen lakhs Thirty thousand only) as lump sum amount of compensation in the above case to the complainant with 6% per annum interest from the date of complaint till realization and also pay Rs. 25,000/- (Rupees Twenty Five thousand only) as cost of litigation to the complainant within 30 days of receipt of the order.

(Dictated to the Confidential Assistant Smt. Josephin Jaya T R, transcribed and typed by her, corrected by me and pronounced in the open Commission on the 25th day of November 2025.)

Sd/-
Beena.K.G, Member

Sd/-
Krishnan K, President

Exhibits

Ext. A1 – Copy of FIR

Ext. A2 – Post-mortem report

Ext. A3 – Post-mortem report

Ext. A4 – Treatment record

Ext. A5 – Copy of disability certificate

Ext. A6 – Copy of the investigation officer report

Ext. A7 – Medical discharge bill

Ext. A8 – Series of bills

Ext. A9 – Certificate issued from school

Ext. B1 – Copy of post-mortem certificate

Ext. B2 – Case sheet

Ext. B3 – Report of State Level Apex Body

Ext. X1 – Medical records

Witness cross examined

PW1 – K S Mathew

PW2 – Dr. S Gopalakrishna Pillai

DW1 – Dr. Sadique Ummer

DW2 - Dr. Shaji K R

Sd/-
Beena.K.G, Member

Sd/-
Krishnan K, President

Forwarded by Order

Assistant Registrar