NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 96 OF 2006

1. NILAM SINGH
VILLAGE - VAISHALI
VAISHALI
BIHAR .....Complainant(s)

Versus

1. DR. R.B. SHARMA AND ANR.
RAJENDRA NAGAR, ROAD NO -2,
PATNA
BIHAR
2. M/S. TARA HOSPITAL AND MEDICAL RESEARCH CENTRE PVT. LTD.
THROUGH ITS DIRECTOR B.P. KOIRALA MARG, BANK ROAD,
PATNA .....Opp.Party(s)

BEFORE:
HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR,MEMBER

For the Complainant : APPEARED AT THE TIME OF ARGUMENTS
Mr. Barun Kumar Sinha, Advocate
Mr. Mudit Kaul, Advocate

For the Opp.Party : APPEARED AT THE TIME OF ARGUMENTS
Mr. K. K. Rai, Sr. Advocate,
Mr. Awanish Kumar, Advocate
Mr. Priyesh Mohan Srivastava, Advocate
Mr. S. K. Pandey, Mr. Anshul Rai, Advocate
Mr. Chandrashekhar, Advocate for OP-1
Mr. Yati Ranjan, Advocate for OP-2

Dated : 26 Dec 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. This Complaint is of alleged medical negligence and deficiency in service claiming compensation from the treating doctor and the hospital.

2. On 08.01.2006 husband of the Complainant Mritunjai Kumar Singh, age about 49 years (hereinafter referred to as 'the deceased' or 'the patient') slipped and sustained a head injury. He was conscious, speech was impaired. On the next day i.e. 09.01.2006, he was taken to Neurologist-Dr. Ashok Kumar Singh in Patna who

examined the patient and C.T. Scan of Head was performed. Then patient was referred to the Neurosurgeon-Dr. R. B. Sharma (OP-1) for neurosurgical intervention. The OP-1 examined the patient in his clinic and advised immediate hospitalisation for brain surgery. Accordingly, on 10.01.2006 the patient was admitted in M/S. Tara Hospital and Medical Research Centre Pvt. Ltd., Patna for short 'Tara Hospital'). Again C.T. Scan of head was performed, it revealed deteriorated condition of brain between 09.1.2006 and 10.1.2006. It was alleged that for about 22 hours OP-1delayed the surgical intervention, which caused further brain damage. The patient after surgery was shifted to the ward as ICU facility was not available in the hospital. On 11.1.2006, for CT scan, patient was taken to another hospital about 5 Km away. The CT revealed hematoma in brain. Therefore, OP-1 performed second operation and closed the brain on by putting a flap. It was further alleged that second operation was conducted to cover-up the negligence of OPs. However, OP-1 failed to control bleeding, by the time patient became brain dead. Thereafter, OP-1 shifted the patient to Magadh Hospital for ventilatory support, but the patient expired on 14.01.2006. The Complainant alleged that it was a case of *res ipsa loquitor*. Being aggrieved by the death of her husband, the Complainant Nilam Singh filed the Consumer Compliant under section 21(A) of the Consumer Protection Act, 1986 before this Commission and prayed compensation of Rs. 3.48 Crores from the Opposite Parties under different heads.

Defense:

3. The Opposite Parties filed separate Written Versions and denied the allegations of medical negligence. The treating doctor-the **OP-1 Dr. R. B. Sharma** submitted that the patient had history fall more than 24 hours and sustained head injury. The patient was brought to him at about 7 PM on 09.01.2006. The patient was a known chronic alcoholic; he could walk with support and he was in confused state. He had weakness in right facial area and in right limbs. Other vital parameters were within normal limits, BP 160/90 mm Hg and pulse 84/min. The Glasgow Coma Score (GCS) was 14/15. The CT Scan doen on 09.01.2006 showed "left sided Fronto Temporal Acute Sub Dural Haematoma (SDH) and brain contusion with mass effect without any sign of scalp or bony injury". Therefore, craniotomy was done as an accepted standard of practice. The best possible medical care was given to the patient and subsequently patient was carefully transferred to Magadh Hospital. At the time of shifting patient's wife did not accompany, therefore the OP-1 explained to patient's brother details of treatment modalities and about the prognosis in chronic alcoholic patient and unpredictable morbidity and mortality. Another surgery was suggested, but patient's brother decide to wait since patient was conscious, and also to discuss with other family members. The OP-1 gave an option to the attendants to seek any expert opinion or to take his patient to centre of their choice for treatment. But at the request of patient's brother, the patient was kept under the treatment of OP-1 at Tara Hospital. It was submitted patient did not file CT Scan report dated 09.01.2006 with the complaint.

4. The patient was monitored round the clock by the panel of doctors along with OP-1 and nursing staff. Due to deteriorating neurological condition of patient, another CT Scan was advised on 10.01.2006. It was suggestive of left frontal and temporo-parietal haemorrhagic contusion with SAH. The patient was re-operated from 3 PM and continued till 6 PM. The left temporal extended craniotomy was performed by team of OP-1 including anaesthetist Dr. A.K. Sinha, Ex. Professor & Head of Anaesthesia and Dr. Kanchan Kumari. Evacuation of 5 mm thick acute SDH was done (inadvertently mentioned as 0.5 mm in OT note), and the burst temporal lobe was evacuated. The dura was closed, bony flap was replaced and the skin (scalp) was closed. After operation the patient was awake and breathing properly. Shifted toward after giving sedation under observation of doctors and nursing staff.

5. In the morning at 5 AM, on 11.01.2006 early the on duty doctor and brother of the patient called OP-1 and at 5.45 AM, OP-1 came hospital and examined the patient. The patient was severely drowsy with deep breathing, closed eyes and non-responsive to the commands. Due to the deteriorating neurological condition of the patient urgent CT Scan was advised to ascertain brain edema or recollection of blood /clot which are well known complications of major craniotomy. The CT was suggestive of postoperative re-accumulation/ development of extra-dural hematomas (EDH) and SDH with little collections of air. The seriousness of the condition of the patient and poor outcome was again explained to the brother and brother-in-law of the patient. An emergency re-operation was performed by the OP-1 after informed consent. Post operatively the condition of the patient critical, OP- 1 suggested elective ventilation, therefore after obtaining the consent patient was

shifted to ICU at Magadh Hospital by an ambulance. OP-1 also a consultant at Magadh Hospital. At no stage the OP-1 assured the attendants about recovery from the critical condition. In spite of all best efforts the patient died, there was no negligence on the part of the treating doctor and hospital.

6. The **Tara Hospital (OP-2)** in its written version submitted that the hospital is one of the reputed in Patna and well equipped having latest technology and modern facilities. There was no single complaint since the inception of the hospital.

Arguments:

7. Heard the arguments from the learned counsel on both the sides. The learned Counsel for the Complainant reiterated the facts and the affidavit of evidence. He vehemently argued that the OT note mentions 0.5 mm thick of SDH whereas CT scan report clearly mentions 10 mm thickness. Therefore, the OPs have not evaluated the patient clinically, radiologically and during Craniotomy surgery. Death of the patient was due to negligence and the principle of ***res ipsa loquitor*** applies in the instant case. He further argued that the OP-2 hospital lacks infrastructure to manage brain injury patients, no ICU facility, no proper recovery room and ventilator etc. He further argued that despite requests from the Complainant and her relatives, the OP-1 did not refer the patient to AIIMS or VIMHANS at New Delhi.The OP-1 discouraged by saying that the patient cannot sustain the journey either by air or by train and he might die midway.

8. The learned Counsel for the OP-1 vehemently argued that it was mild head injury, GCS 14/15. Dr. A K Singh who had referred the patient for 'neurosurgical evaluation' also did not suggest immediate surgery. After being informed about the high mortality and unpredictable results, the patient's attendants took time to take decision to undergo surgery. They preferred to wait and watch as the patient was conscious and able to talk. He further submitted that not having certain infrastructure, by itself will not constitute medical negligence. The Counsel relied upon the judgment **Malay Kumar Ganguly v. Dr. Sukumar Mukherjee &Others**[1] and **Vinitha Ashok (Smt.) v. Lakshmi Hospital and Others**[2]**.**

9. The Counsel for OP-2 reiterated the affidavit of evidence. He relied upon the Judgments in the case of ***Kusum Sharma & Ors. vs. Batra Hospital & Medical Research Center and Ors.***[3] and ***Jacob Mathew vs. State of Punjab***[4].

Discussion:

10. It is admitted fact that the patient was chronic alcoholic and suffered accidental head injury due to slip. The treating doctors have told the attendants about the prognosis of such head injury and the mortality. From the medical record it is evident that the OP-1 decided to keep the patient under observation as requested by the attendants. It was also informed by OP-1 that if the condition of the patient deteriorates then he will go for operation.

11. On perusal of medical record and the operative notes, we note that the patient was admitted on 09.01.2006 at 9.00 PM in the Hospital (OP-2) and treatment was started. The panel of doctors including the OP-1, the nursing staff were monitoring the patient round the clock. On 10.01.2006 when the patient's neurological condition started deteriorating, therefore, the operation was decided. The CT Scan dated 10.01.2006 was suggestive of left frontal and temporoparietal haemorrhagic contusions with SAH. Therefore patient was operated immediately at 3.00 PM and it continued till 6.00 PM and 5 mm thick acute SDH and the burst temporal lobe were evacuated. The dura was closed and bone flap was replaced. Post operatively patient was awake and breathing properly. The patient was sent to ward after giving sedation. Thereafter, neurological condition deteriorated further on 11.01.2006 and CT Scan was suggestive of re-accumulation/ development of extra dural hematomas, subdural hematomas and little collections of air. Therefore patient was re-operated on 11.01.2006 as an emergency and transferred to Magadh Hospital for ventilatroy support to manage critical condition. In our considered view, the patient was properly investigated and based on the CT and clinical findings he was operated. The referral to Magadh Hospital was correct decision during the need of critical ventilator support. It was standard of reasonable care in the neurology/neurosurgical practice. We do not find

any negligence during preoperative or operation stage or at postoperative stage for Tara Hospital or in Magadh Hospital.

12. It is pertinent to note that in year 2006, the MRI facilities and CT scan facilities were not easily available in hospitals of Patna, even the state- owned Hospital PMCH was not having MRI Facility. The ICU Facility itself started in the year 2007 at Patna Medical College and Hospital. Therefore considering the circumstances the OP-2 cannot be held liable for having adequate infrastructure. From the literature, the mortality rate of patient having SDH is 40-60%, and the functional recovery rate is 40%. Therefore, death of the patient cannot be attributed to medical negligence on part of either of the Opposite Parties.

13. The Hon'ble Supreme Court in **Kusum Sharma & Ors. vs. Batra Hospital & Medical Research Center and Ors.** (Civil Appeal No. 1385 of 2001) held:

> *"The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.*
>
> *Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession*
>
> *It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.*
>
> *It is our bounden duty and obligation of the Civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.*
>
> *The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.*
>
> *The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."*

14. In the case of **S. K. Jhunjhunwala vs. Dhanwanti Kaur and Another**[5] Hon'ble Supreme Court held that that there has to be direct nexus with these two factors to sue a doctor for negligence. It was further held that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent

15. Based on the forgoing discussion, in the instant case, the medical negligence is not conclusively established against the Opposite Parties and his team, who have performed the lumber spinal surgery with reasonable duty of care.

16. The Complaint fails. It is dismissed.

---

[1] (2009) 9 SCO 221

[2] (2001) 8 SCC 731

[3] *(Civil Appeal No. 1385 of 2001)*

[4] *(2006) 6 SCC 1*

[5] (2019) 2 SCC 282

.....
DR. S.M. KANTIKAR
PRESIDING MEMBER

.....
BINOY KUMAR
MEMBER