NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 317 OF 2002

1. SMT. REENA BANSAL
C/o. Pankaj Agrawal-Ganesh Bhandar, R/o. 149, Meerganj,
Opposite Gur Mandi,
Allahabad
U.P ....Complainant(s)

Versus

1. DR. MEENAKSHI MISHRA ,JHA HOSPITAL & ANR.
MATERNITY SURGICAL AND ULTRASOUND CENTER
MADHUGARHI
HATHRAS - 204 101 ....Opp.Party(s)

BEFORE:

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

For the Complainant :
For the Opp.Party :

Dated : 17 Apr 2023

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For Complainants	:	Mr. Lav Kumar Agrawal, Advocate & Ms. Usha Garg, Advocate
For Opposite Parties	:	Mr. Om Prakash, Advocate with Mr. Pradeep Kumar Tripathi, Advocate Ms. Shivangini Sharma, Advocate for OP-1 a/w Ms. Meenakshi Mishra, in person Mr. Anupam Singh, Advocate for OP-2

Pronounced on: 17th April, 2023

ORDER

PER DR. S.M. KANTIKAR, MEMBER

1. The Present Complaint had been filed by Reena Bansal (Complainant No. 1) and her husband Manoj Bansal (since deceased) (Complainant No. 2) & her father-in-law Dr. B.R. Bansal (Complainant No. 3) hereinafter referred to as the 'Complainants' against Jha Hospital, Maternity Surgical and Ultrasound Centre (for short 'Jha Hospital')- Dr. Meenakshi Mishra-D.G.O. (OP No. 1) & Dr. Anupam Singh-Anaesthetist (OP No. 2) hereinafter referred to as the 'Opposite Parties' for alleged medical and deficiency in service on the part of Opposite Parties which resulted in the removal of the uterus of Complainant No. 1.

2. The Complaint:

2.1 Smt. Reena Bansal the Complainant No. 1(for short 'the patient') a primi (first pregnancy) was under observation of Dr. Meenakashi Mishra (OP No. 1) at her Jha Hospital (OP No. 2). After Ultrasonography (USG) study it was diagnosed as twin pregnancy. It was alleged that the OP No. 1 informed the patient about need for Caesarean instead of a normal delivery. On 27.09.2001 OP No. 1 performed the caesarean operation under spinal Anaesthesia administered by Dr. Anupam Singh (OP No. 2). After the C-section, from OT she was shifted to her bed. It was further alleged that the patient's Peticot was soaked in blood due to heavy blood loss about 15 ounces. Patient's husband immediately informed OP No. 1, but no steps taken to stop the bleeding, but the doctor refused by stating that she was busy with another patient. As a result, the patient suffered from severe Post-Partum Haemorrhage (PPH). Her abdomen became distended, and she was taken to OT again for hysterectomy. It was allegedly performed without the consent of Complainant No. 2 & 3. But, the consent was given under fear by her husband.

2.2 The Complainants further alleged that due to heavy dosage of spinal anaesthesia, the uterus did not contract fully after delivery, thus caused PPH. It was wilful negligence of OP No. 1 & 2, who did not check full contraction of uterus before putting the stitches. It further resulted into placental fragments and blood clots being left inside the uterine cavity. The several open sinuses at placental side led to heavy bleeding. The surgeon might have injured the uterine artery during the caesarean.

2.3 The Complainant No. 2 & 3 took opinion from few expert doctors and came to know that OP No. 1 committed fraud in her qualification -degree DGO which was not recognised by MCI. Dr Anupam Singh (OP No.2) husband of OP-1 was not a qualified Anaesthetist and/or Radiologist but he was just MBBS. The degree 'MA' mentioned in his letterhead was misleading as Master of Anaesthesia. The OP-2 performed USG of the patient and also gave spinal anaesthesia. The third name Dr. R.L. Singh, MS on the prescription was mentioned to mislead the or only to deceive the patient as he never visits Jha Hospital and his whereabouts nobody knows. Thus, it was only to cheat the patient.

2.4 Being aggrieved by the negligence of OPs, the Complainants filed the Consumer Compliant under section 21 of the Consumer Protection Act, 1986 against the Opposite Parties for medical negligence and deficiency in service. The Complainants prayed for compensation to the tune of Rs. 45,00,000/-.

3. Defence:

3.1 The Opposite Parties filed their Written Versions and denied the allegations of medical negligence. The preliminary objections were raised like the matter is complex. Thus, Civil Court was proper, rather than summary proceedings under the Consumer Protection Act. The Complainants have approached Medical Council of India, The District Magistrate at Hathras and before this Commission. However, all the Complaints show significant discrepancies, additions, and alterations. The OPs further submitted that the Complainants have not paid complete dues, therefore contractual obligation ended with the patient, thus Complainants no longer stand as Consumers. Therefore, the instant Complaint is liable to be dismissed.

3.2 On 23.09.2001, patient came to O.P.D. with labour pain and hypertension. She was advised for admission and trial for normal labour with a dose of castor oil with hot milk. Blood investigations were advised. The patient and her husband refused for all treatment, admission and investigation. Thereafter on 26.09.2001, she again came back to Jha Hospital with Foetal Distress Syndrome (FDS) with severe labour pains. She was referred to higher center but the patient did not opt. On 27.09.2001, OP-2 diagnosed it as grave emergency. The patient was in labour with twin pregnancy, with high blood pressure, with premature rupture of membranes and leaking of liquor. The USG and Doppler study revealed "Foetal Tachycardia" signifying foetal distress as well. After informed written Consent duly signed by Complainants No. 2 & 3, it was decided to perform emergency C-section. IV drip started, blood for cross matching was sent. The patient was shifted to OT. One unit of 'O' Positive blood from Hathras Blood Bank was transfused to the patient. The Caesarean Section was done with due care and diligence in the best interests of the mother and her twins. The OPs further kept 2 units of O+ve blood reserved at Hathras Blood Bank.

3.3 It was further submitted that OP-2 did not administer Anaesthesia, but it was administered by the Anaesthetist Dr. R. Shankar, MBBS, DA. The Caesarean Section was done by Dr. Meenakshi Misra (OP-1) in the presence of Dr. Ajay Bansal, MS, who was called because of high-risk status of the patient. The two babies were delivered and handed over immediately to Dr. Anil Kumar Gupta, MD Paediatrics.

3.4 Thereafter, as soon it was confirmed that massive PPH and Atonic Uterus, as she was not responding to aggressive conservative management, therefore she was immediately shifted to OT. The doctors in the OT reassessed the patient's condition, confirmed there was no trauma to her genital tract. The team of doctors in OT, took a decision of emergency hysterectomy - to remove the Atonic Uterus i.e. Caesarean Hysterectomy. The patient's attendants were kept informed at every point, wherever necessary, and whenever enquired. They performed subtotal hysterectomy. The patient was continued on the Oxytocin Drip and additional injections of Prostodin (250mcg). In addition vasopressors besides Colloid and Crystalloid solutions were also administered. The relatives were kept informed time to time.

3.5 The OP-1 further submitted that she never ever stated that her husband Dr. Anupam Singh possessed highest degree in Anaesthesia as **'Master of Anaesthesia'- MA** which is the highest degree in anaesthesiology. However, OP-2 was attending as a General Physician. The degree of MA was for Master of Arts in Psychology conferred him by Agra University in 1984. He did not administer Anaesthesia to the instant patient. Before MCI, the Complainant had not taken such ground, thus it was an afterthought allegation.

4. All the parties completed their pleadings and filed their evidences.

4.1 We have heard the arguments at length from both the sides. The learned Counsel on both the sides reiterated their evidence on record. They have filed literatures on the subject and text book references. They have filed their brief notes of written arguments. The learned counsel for the Complainant vehemently argued that after the subtotal Hysterectomy, 90% chances of cervical cancer or breast cancer.

5. Observation & Discussion

5.1 In the instant case, the patient was a Consumer as he paid the charges (for the services) partly. Also, the Complaint is well within the pecuniary jurisdiction of this Commission. Moreover, we do not find any complicated question of facts to send this matter to Civil Court. Therefore, all preliminary objections of the OPs are not sustainable.

5.2 We have perused the affidavits and the degree certificates of OP-1 and OP-2. It is evident that from Agra University the OP-2 obtained M.B.B.S. degree in 1991 and obtained Master of Arts in Psychology [M.A.] in 1984. It should be borne in mind that in medical parlance there is no such degree "**Master of Anaesthesia**" it would be either degree **M.D.** or diploma **D.A.** The Complainants have intelligently twisted the words and filed the instant complaint. Displaying the degree on his letter head or display board in the clinic or hospital does not constitute professional misconduct. In our view, it was neither a fake degree nor any misrepresentation by the OP-2. But, mentioning as physician and heart specialist shall not be allowed without valid degree or diploma as prescribed under MCI (now NMC). Secondly, the OP-1 was Gynaecologist her qualification DGO (Diploma in Obstetrics & Gynaecology) was not fake. We have perused the order of UP Medical Council dated 20.10.2003, which held that Dr. Minakshi Mishra and Dr. Anupam Singh were professionally qualified. His clinic was registered with CMO, Mahamaya Nagar for USG. It also stated that there was no medical negligence or professional misconduct from both the doctors. In the instant case admittedly, OP-2 did not give anaesthesia but it was given by Dr. R.Shankar (anaesthetist). We further like to clarify that the OP-2 was trained in USG; therefore, he can perform USG.

5.3 We have perused the affidavit filed by Dr. Rajendra Shankar (anaesthetist). He submitted that he gave anaesthesia to the patient for C-Section and also for emergency caesarean hysterectomy. The another affidavit of Dr. Ajay Bansal a general surgeon submitted that he was present in the OT during C-Section performed by OP-1 and thereafter to save the life of patient he and OP-1 performed emergency caesarean hysterectomy for atonic uterus. The supporting affidavit from Dr. Anil Kumar Gupta, the paediatrician submitted that he was present in the OT during emergency C-Section and he took care of twins after delivery. One of the twins was showing fetal distress syndrome.

5.4 About the treatment, we do not find any fault with the treating doctors, because it was twin Pregnancy with Premature Rupture Of Membranes (PROM). She had PIH and one baby showed signs of Foetal Distress. Therefore, in the morning on 27.09.2001, the OP-1 performed C-section under spinal anaesthesia and the patient delivered twins a male and a female. Thus, Caesar was performed in the best interests of the mother and twins. Thereafter due to PPH the patient was in haemorrhagic shock. The patient was shifted to

the OT and emergency Subtotal Hysterectomy was performed. Thus in our considered view, the decision of OP-1 was correct, there was no dereliction of duty of care.

5.5 In our view, the PPH was due to Atonic uterus. It was not due to any retained placental pieces. As a standard of practice after Cesarean delivery, the placenta as well as its membranes are removed manually and the uterine cavity is cleaned by suction & mopping. Therefore, no possibility of any placental fragments or its membranes being left behind within the uterus. The Uterus was firmly contracted, therefore chances of retained fragments does not arise. Also, bleeding due to retained small placental fragments is uncommon in the immediate postpartum period. The late PPH occurs after 24 hrs or more after delivery and in that case the most common causes are retained fragments of placenta and sub involution of the placental implantation site[1]. In the instant case the bleeding was started at about only one hour after her delivery.

5.6 It is pertinent to note that, the complaints have filed complaints before MCI, DM & CMC, Hathras. We find that, the hospital is registered by CMO, Hathras as per the requirement of PNDT Act. Therefore OPs were to carryout USG.

5.7 **Medical literature on the subject:** We took reference from the William's Obstetrics a standard textbook. It dealt with PPH and Postpartum Hysterectomy,

5.7.1 The Postpartum haemorrhage (PPH) is known as an Obstetric haemorrhage is associated with increased risk of serious maternal morbidity and mortality. The PPH is generally defined as blood loss greater than or equal to 500 ml within 24 hours after birth. If it's about 1 litre or more, it is known as severe PPH. Most cases of morbidity and mortality due to PPH occur in the first 24 hours following delivery and these are regarded as primary PPH whereas any abnormal or excessive bleeding from the birth canal occurring between 24 hours and 12 weeks postnatal is known as secondary PPH. It may result due to failure of the uterus to contract adequately **(atony)**, genital tract trauma (i.e. vaginal or cervical lacerations), uterine rupture, retained placental tissue, or maternal bleeding disorders. **Uterine atony** is the most common cause and consequently the leading cause of maternal mortality worldwide.

5.7.2 As per the **WHO recommendation**,[2] if bleeding does not stop with uterotonics and the conservative interventions like bimanual uterine massage, external or internal pressure, then surgical interventions should be initiated. Initially compression sutures may be attempted and, if it fails, uterine, utero-ovarian and hypogastric vessel ligation may be tried. If even after ligation life-threatening bleeding continues, the subtotal hysterectomy should be performed.

6. The sequence of events revealed us that the patient was primi gravida with Twin Pregnancy. On the USG findings in second trimester, it was high risk pregnancy. The patient developed Jaundice, she was examined by OP-2 again informed of high risk pregnancy and referred her to Agra for opinion from Dr. Barun Sarkar a senior OBG , but the Complainants have not filed treatment papers. The patient was increasingly irregular and asked to seek a second opinion, but she emphasized her faith in the treatment of OP-1 & 2 On 23.09.2001, she advised admission and trial for normal labour, but she did not follow the advice, got admitted on 27.09.2001. After the C- section she developed PPH due to Atonic uterus. Blood Transfusion was started at 1.15 P.M. The attendants were informed of the surgical possibilities; the husband opted for Hysterectomy and gave his consent. Sub-Total Hysterectomy was performed under GA and Blood Transfusions were given. The patient was well oriented, conscious. 2nd unit of blood started in O.T. The patient was sifted to room at 4.30 pm. The 3rd and 4th unit of blood was transfused in the room. Oral intake allowed on 29.09.2001 at 10P.M. She was discharged on 07.10.2001 with follow-up instructions with her two babies.

6.1 The main issue that whether emergency hysterectomy performed by OP-1 was not correct. It should be borne in mind that a doctor faces emergency situation he/she has to choose the treatment to save the patient. In **Jacob Matthew v. Union of India [3]**, Hon'ble Supreme Court observed as under:-

> "25......**At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil**. 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. Which course is more appropriate to follow, would depend on the facts and

circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in-charge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, **the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure."**

6.2 In our considered view, the OP-1 and 2 have attended the patient with due care, skill and diligence as acceptable to the medical profession. There was no medical negligence on the part of the Opposite parties. The skill of the doctor differs from each other as there may be more than one course of treatment which may be advisable for treating a patient. Thus, as long as the doctor performs his duties to the best of his ability and with due care and caution, negligence can't be attributed to him[4].

7. Based on the afore discussion and following the precedents, the Complainants have failed to establish failure of duty of care or any deficiency from the treating doctors. The Complaint is accordingly dismissed.

There shall be no order as to costs.

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[1] Practical Guide to High Risk Pregnancy and Delivery, 2nd Ed

[2] WHO guidelines for the management of postpartum haemorrhage and retained placenta

[3] (2005) SCC (Crl.) 1369

[4] Achutrao Harbhau Khodwa Vs. State of Maharashtra - (1996) 2 SCC 634

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER