

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2961 OF 2013

(Against the Order dated 02/05/2013 in Appeal No. 211/2009 of the State Commission Uttar Pradesh)

1. MANOJ KUMAR SAXENA & ANR.
S/O SH.S.B SAXENA, 76/4 DOUBLE
STOREY.GOVIND PURI, MODINAGAR,
DISTRICT : GHAZIABAD
U.P -2012301

2. K.M AASHII (MINOR) D/O SH MANOJ KUMAR
SAXENA, THROUGH HER FATHER & GURDIAN
SH. MANOJ KUMAR SAXENA,
76/4 DOUBLE STOREY.GOVIND PURI,
MODINAGAR
DISTRICT : GHAZIABAD
U.P -2012301

.....Petitioner(s)

Versus

1. LOKPRIYA HOSPITAL & 4 ORS.
THROUGH ITS DIRECTOR, DR.ATUAL
BHATNAGAR, SAMRAT PALACE, GARH ROAD,
MEERUT
STATE : U.P

2. DR.ATUL BHATNAGAR, DIRECTOR LOKPIOYE
HOSPITAL,
SAMRAT PALACE, GARH ROAD,
MERRUT
U.P

3. SUBHARATI K.K.B. CHARITABLE TRUST,
SAMRAT PALACE, GARH ROAD,
MERRUT
U.P

4. DR. SUBHASH YADAV, .M.S M.CH
(URLOGIST) , C/O LOKPRIYE HOSPITAL
SAMRAT PALACE, GARH ROAD,
MERRUT
U.P

5. NEW INDIA ASSURENCE CO LTD.,
101-105, CHIPI TANK, SHIVAJI ROAD,
MERRUT

U.P

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

For the Petitioner :

For the Respondent :

Dated : 01 Jun 2021

ORDER

Appeared at the time of arguments through Video Conferencing

For Petitioner : Mr. Ramit Malhotra, Advocate

For Respondents No. 1 - 3 : Mr. Gaurav Sharma, Advocate

Mr. Anoop K. Kaushal, Advocate

For Respondent No. 4 : Dr. Subhash Yadav, in person

For Respondent No. 5 : Dr. Sushil Kumar Gupta, Advocate

Mr. Atishaya, Advocate

Pronounced on: 1st June 2021

ORDER

1. The present Revision Petition has been filed by the Complainants being aggrieved by the order passed by the State Consumer Disputes Redressal Commission, U.P. (hereinafter referred to

as “State Commission”) which had dismissed the Appeal No. 211/2009 and upheld the Order passed by the District Consumer Disputes Redressal Forum, Meerut (hereinafter referred to as “District Forum”) dismissing the Complaint.

2. Brief Facts:

Smt. Sangeeta Saxena the wife of the Petitioner/Complainant No.1 (since deceased, hereinafter referred to as the ‘patient’) was diagnosed as a stone in the left kidney on 21.04.2002. Dr. Subhash Yadav, the Urologist (OP-4) performed operation Percutaneous Nephrolithotomy (PCNL) on 02.10.2002 at Lok Priya Hospital (OP-1). It was alleged that the patient was discharged on the next day at 6 PM though her condition was not normal. In the night there was cessation of urine and swelling of face. Her condition further deteriorated due to loose motions, fever and vomiting. She was brought to OP-1 hospital in the early morning. After investigations revealed that the patient was suffering from Fungal septicaemia and multi organ failure. Therefore, for further management Dr. P. R. Sirohi referred her to Dr. R. K. Mani at Apollo Hospital, New Delhi. Immediately the patient was admitted to Apollo Hospital. At the time of admission her BP was very low 81/32 of Hg, SP-O2 was 86% with ecchymosis (red) patches on nose and arms. She was anuric for one day. Dr. Mani diagnosed it as an instrument induced infection leading to Hemolytic uremic syndrome (HUS). It was alleged that the said fungal infection was developed due to infected instruments used at OP-1 Hospital, it caused the death of the patient on 14.10.2002. Being aggrieved a Consumer Complaint before the District Forum, Meerut was filed by her husband Manoj Kumar Saxena and minor daughter.

3. The OPs -1 to 4 have filed their written version and denied any negligence during treatment. The OPs denied that the patient developed septicaemia due to instruments, however the OPs alleged that it might have developed at Apollo Hospital. It was further submitted that the patient did not pay hospital charges and due to good relations with Dr. Atul Bhatnagar (OP-2), the Director of Apollo Hospital, the OP-1 waived off the hospitalisation bill on humanitarian ground.

4. After hearing the averments of the parties, the District Forum dismissed the Complaint. Being aggrieved, the Complainants approached the State Commission by filing the appeal and the same was dismissed. Being aggrieved the Complainants filed the instant Revision Petition.

5. Heard the arguments from the learned Counsel for both sides. Perused the material on record.

6. The short delay of eight days in filing the instant Revision Petition is condoned.

7. Learned Counsel for the Petitioner vehemently argued that both the fora erroneously dismissed the Complaint by holding the Complainant was not a Consumer under Section 2(1) (d) of the Act as the complainant did not pay the hospital bills and it was free service. He further submitted that the fungal septicemia is a hospital acquired fungal and in most of the cases develops due to non-sterilized instruments used during operations. Dr. Mani of Apollo Hospital clearly opined that the deceased suffered instrument associated sepsis and HUS. Therefore, the principle of *res-ipsa loquitur* is applicable.

8. Learned Counsel for the OP vehemently argued that the PCNL was performed by properly sterilized instruments and there was no chance of any fungal infection. It was the case of HUS which caused death of the patient. The complainants failed to conduct post-mortem to ascertain

the cause of death. They have not filed any expert opinion. The Complainants failed to implead the Apollo Hospital to prove their case.

9. I have perused the entire material on record, *inter alia* the medical record of OP-1 hospital and the Apollo Hospital. The main question in the instant Revision Petition is whether after PCNL the patient suffered fungal infection and subsequently developed HUS. It is evident from the medical record that the OP-4 removed renal stone (left kidney) through PCNL method. The procedure was uneventful and the patient was kept under observation for 36 hours and then discharged with her father on 03.10.2002 in stable condition at 6 PM. At home, after taking food, the patient developed vomiting and loose motion and re-admitted in the OP-1 Hospital. The doctors OP-4, Dr. N. P. Singh and Dr. T. R. Sirohi examined the patient. The investigations revealed the platelets count was drastically reduced to 70,000 and patient was severally dehydrated and low blood pressure. The doctors suspected fungal septicaemia and MOF. The patient was on higher antibiotics and as soon as HUS was detected, without any delay the patient was referred to Apollo Hospital. Dr. Ajit Saxena, the Urologist and few other doctors examined the patient the bladder was found empty and kidneys were not palpable therefore no further Urological intervention was necessary. It is pertinent to note that that during recovery the patient on request got discharged from Apollo Hospital and readmitted with the OP-1 on 11.10.2002 and during treatment she passed away on 14.02.2002. In my view there was no negligence or deviation from the standard of treatment given by the OP-4.

10. The discharge summary of the Apollo Hospital revealed elevated Renal function test (Creatanin 5.4 mg, Urea 151 mg). The Hb 6.2%, TLC-7,400/ cmm and platelet count 76000/cmm. The blood culture revealed budding yeast – candida SPP and no bacterial group. Candida a commensal fungus present in the alimentary and reproductive tract which sometimes can invade the blood. The patient was started medicine Amphotericin B. Dr. R. K. Mani based on clinical and laboratory findings diagnosed it as a case of HUS and advised ventilator support and haemodialysis. After stabilisation of patient's condition haemodialysis was done. She was discharged at the request of her husband, the patient was little drowsy. Thereafter she became critical and again taken to OP-1 hospital wherein she died on 14.10.2002.

11. As per the medical literature candida which is fungus present in oral cavity and gastrointestinal tract sometime overgrows and enters the blood stream. The surgery has no role to play such infection. The Complainant failed to produce any evidence that candida infection was caused by non-sterile surgical equipment. The two samples of blood culture done on 07.10.2002 at Apollo Hospital yielded “no growth” and other found “budding yeast cells”. Thus, it was not conclusive of any fungal septicemia. It is to be noted that none of the patient has ever caught fungal infection in the OP-1 hospital. It is evident from the discharge summery of Apollo Hospital the condition of patient was improving in Apollo Hospital; in this condition the treatment should have continued.

12. I note there was no delay from OP-1 hospital referring the patient to Apollo Hospital as soon as HUS was suspected. As per the medical literature on Hemolytic uremic syndrome (HUS)- it is a condition that affects the blood and blood vessels. It results in the destruction of blood platelets (cells involved in clotting), a low red blood cell count (anemia) and kidney failure due to damage to the very small blood vessels of the kidneys. Other organs, such as the brain or heart, may also be affected by damage to very small blood vessels. Therefore, fungal infection has no role in development of HUS in the instant patient. Diarrhoea begins approximately 3–8 days after intake of contaminated food. It is watery in the beginning and become bloody later. Abdominal pain, nausea and vomiting accompany diarrhoea. Laboratory findings related with the classical

triad of the disease (microangiopathic hemolytic anemia, thrombocytopenia and acute renal damage) are present.

13. I have gone through the medical text books on Pathology, Hematology and Nephrology. The instant case appears to be septicaemia and MOF after the PCNL. The aetiology is more in favour of crushing and removal of stone which itself was highly infective. Such complications are known after procedure. Just suspecting fungal septicaemia was erroneous. Moreover, HUS is entirely different entity and I am not convinced with Dr. Mani's diagnosis of HUS and his comments of instrument induced septicaemia. It is surprising that the diarrhoea related HUS is commonly seen in children and very rarely in adult. The condition of patient was more in favour of sepsis induced DIC which was missed. There was no haemolysis, no renal failure and laboratory findings were not conclusive of HUS.

14. I would like to rely upon the decision of a three judge Bench of Hon'le Supreme Court in **Dr Laxman Balkrishna Joshi v Dr Trimbak Babu Godbole**, AIR 1969 SC 128, wherein it was stipulated that the standard to be applied by a medical practitioner must be of a "reasonable degree of care":

"11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz. a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

(cf. Halsbury's Laws of England 3rd Edn. Vol. 26 p. 17)."

In the instant case the PCNL was uneventful; however the patient developed septicemic complications after 2 days and treated at Apollo Hospital. The complainant failed to produce any cogent evidence to prove the instruments were infected and caused of fungal infection. In my view, it was the known complication of removal of infected stone by PCNL despite antibiotic coverage. However, I suspect the death was due to septicemia induced fatal DIC, but not HUS which is a distinctly different entity. The treating doctors at OP-1 hospital followed the standard method with reasonable degree of skills and treated the patient, it was not a medical negligence.

15. Based on forgoing discussion, I do not find merit in this Revision Petition, hence dismissed.

There shall be no order as to costs.

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DR. S.M. KANTIKAR

PRESIDING MEMBER