NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 161 OF 2008

1. APARNA PANDEY & ANR

W/o Deceased Sh. Umesh Pandey, Resident of Flat No. 304, Block-I, East End Apartments Indira Puram

GHAZIABAD.

UttarPradesh

2. MASTER PRANAV PANDEY, (MINOR SON)

S/o Deceased Sh. Umesh Pandey, Resident of Flat No. 304, Block-I, East End Apartments,Indira Puram

Ghaziabad

Uttar Pradesh

3. MASTER AYUSH PANDEY, (MINOR SON)

S/o Deceased Sh. Umesh Pandey, Resident of Flat No. 304, Block-I, East End Apartments, Indira Puram

Ghaziabad

Uttar Pradesh .....Complainant(s)

Versus

1. INDRAPRASTHA APOLLO HOSPITALS DELHI & ORS

Through its Chairman & Managing Director, Sarita Vihar, Mathura Road

NEW DELHI - 110076.

Delhi

2. DR. SUBHASH GUPTA

Senior Liver Transplant Surgeon, Department of Liver Transplantation, Indraprastha Apollo Hospitals, Sarita Vihar, Mathura Road

New Delhi - 110 076

Delhi

3. -

- .....Opp.Party(s)

BEFORE:

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

For the Complainant :
For the Opp.Party :

Dated : 01 Jun 2021

ORDER

Appeared at the time of arguments through Video Conferencing

		Mr. Bijendra Singh, Advocate
For the Complainants	:	Mr. S. P. Mishra, Advocate
For the Opposite Parties	:	Mr. Anand Jain, Advocate Ms. Rosy, Advocate

Pronounced on: 1 st June, 2021

ORDER

Brief facts are that on 03.12.2006, Mr. Umesh Pandey about 36 years of age (since deceased, hereinafter referred to as the "patient") visited the Indraprastha Apollo Hospital, Delhi (hereinafter referred to as the "Hospital / Opposite Party No. 1) for the complaint of jaundice. Dr. Subhash Gupta (hereinafter referred to as the "Opposite Party No. 2) examined him and after conducting investigations admitted the patient in the Opposite Party No. 1 Hospital. The treatment was advised for urgent Liver Transplantation and the Opposite Party No. 2 assured 100% cure as in those days, it was safe surgery which he does regularly. The patient could go home ten days after surgery and could resume his normal duty after two months. On 08.12.2006, the patient's wife Aparna Pandey – the Complainant No. 1 herself was willing to donate her liver but it could not match. Two other donors were also tested but they also not found suitable for liver donation. Thereafter, the mother of the Complainant No. 1 was tested and found suitable to donate part of her liver to the patient i.e. her son-in-law. Accordingly the hospital obtained appropriate approvals for organ transplant from the concerned State Authorities. The package of Rs. 15 lakh was agreed for liver transplantation including Rs. 1.15 lakh towards various tests. The Opposite Party No. 2 performed liver transplantation on 17.12.2006. It was alleged that during the surgery, the patient suffered significant blood loss and metabolic acidosis and the patient was kept in ICU after the surgery. The Opposite Party No. 2 informed the Complainant No. 1 that the surgery had been successful. The Complainant No. 1 submitted that even after several hours, the patient did not recover from the Anesthesia and the patient was looking restless which was reported to the doctors in the ICU. However, the Opposite Party No. 2 kept on assuring the Complainant No. 1 to not worry, the patient will recover shortly. The condition of the patient further deteriorated and the Complainant No. 1 made several requests but the doctors did not pay any attention. As the patient became critical, therefore, on 19.12.2006 the other team of doctors hurriedly performed second surgery after realising that there was continuous bleeding from the active bleeders which were not closed properly during first operation. The first operation was performed by the Opposite Party No. 2 in very negligent and cavalier manner. The Opposite Parties failed to exercise reasonable care during operation, and as per standard procedure failed to monitor hourly condition of patient. The Opposite Party No. 2 unnecessarily delayed the 2 nd operation by two days which

caused further deterioration of the patient. It was gross negligence and deficiency in the service. The attitude of doctors towards the patient was not good. The Complainant learnt that during 2 nd operation the Opposite Party No. 2 simply cleaned the blood and blood clots from the abdomen without locating the source of bleeding and bleeders. Despite the 2 nd operation, the bleeding continued which caused drop in blood pressure (BP). Though the patient was critical, the Opposite Party performed renal haemodialysis without any justification. It was further alleged that the attitude of doctors towards the patient was not good and the patient was not examined regularly after 2 nd surgery which caused fungal infection at the operated site. After seven days of re-operation the doctor suspected fungalsepsis on 26.12.2006 and prescribed Amphotericin medicine which had little effect and ultimately worsened the condition of the patient. Due to fungal infection there was blackening of surgical wound which was not noticed by the doctors. It further led to gangrene and the death of the patient on 29.12.2006. It was further alleged that the cause of the death mentioned in the death summary and in the medical record contradicts with each other.

2. Being aggrieved by the death due to alleged gross negligence and deficiency in service during treatment of the patient the deceased patient Aparna Pandey as the Complainant No. 1 and her minor children Master Ayush (Complainant No. 2) and Master Pranav (Complainant No. 3) filed the Complaint before this Commission on 28.11.2008 and prayed compensation of Rs. 2,06,13,496/- alongwith 18% interest from the date of admission in the Opposite Party Hospital plus Rs. 50,000/- towards cost.

3. The Opposite Parties filed their written version and denied negligence. The Opposite Parties submitted that in the year 2002, the patient was diagnosed as Chronic Liver Disease (CLD). The patient's wife suppressed certain material facts in the pleadings that the patient was treated at Metro Hospital for liver cirrhosis and acute on chronic liver failure. The patient was admitted on 03.12.2006 in the hospital emergency ward with the complaints of yellowish discolouration of eyes, nausea, vomiting and mild pain in abdomen since two months. There was mild ascites, splenomegaly and left renal hydroneprosis. The earlier endoscopy revealed esophagial varices and MRI revealed scerotic changes with liver parenchymal disease. The patient's critical condition was explained to the patient's relatives and informed about the tentative expenses of liver transplant. The patient was charged as per the fixed tariff of the hospital. On 17.12.2006, the Opposite Party No. 2 and his team performed the liver transplant after obtaining high risk consent. Post-operatively, the patient developed renal failure, gross coagulopathy and severe portal hyper-tension. Commonly, the post-operative bleeding seen due to coagulopathy and it takes 24 to 40 hours for the transplanted liver to start functioning. During the Transplant surgery continuous blood investigations for coagulopathy were performed. The doctors denied the allegation that active bleeders were not closed properly during first operation. Few patients often need re-operation depending upon the patient's clinical assessment.

4. The Opposite Party No. 2 denied that the operation site was bleeding and simply the blood clots from abdomen of the patient were removed during 2 nd operation. He submitted that the 2 nd surgery performed on 19.12.2006 was Exploratory Laparotomy for evacuation of the blood clots and abdominal lavage. The clots were mainly present in the peri-hepatic region and the site of bleeding was not pinpointed during the surgery. The Complainant failed to prove that the bleeding continued even after the 2 nd operation.

5. As per protocol, the anti-rejection treatment is to be given to the patients after liver transplant, however it reduces the immunity and the patient becomes prone for infections. In the

instant case, the patient developed fungal infection and she was treated with due care as per the clinical signs. The patient expired because of natural consequences of the chronicity of the disease, it was neither due to any negligence nor deficiency from the treating doctors. The Opposite Parties denied any delay in the treatment of fungal infection.

6. The Opposite Party No. 1 further submitted that no video recording was done for liver transplant operation, because the surgery consumed 12-18 hours and involves team of multiple surgeons, anaesthetists and other para-medical staff.

7. Both the sides have filed their respective Affidavits of Evidence and relevant medical literature on the subject.

Arguments:

8. I have heard the arguments from both the sides and perused the medical record. Both the sides have reiterated their Affidavit of Evidence.

Findings & Conclusion:

9. It is apparent from the medical record that the patient was treated by a multi-disciplinary team of doctors during his hospitalisation. The entire procedure, treatment, surgeries and dialysis were performed after explaining the prognosis' to his family. During pre-transplantation period, due care of the patient taken by the treating doctors and staff. The Post-operative monitoring and wound dressings were done regularly. The patient, after liver transplant, suffered renal failure and very high Bilirubin level. Fungal infections are known to be opportunistic infections in such patients. The anti-rejection treatment affects the immunity of the patient and became prone to fungal infections. There was no deficiency in the treatment as alleged. The patient developed necrosis / gangrene and septicaemia which could not be attributed to negligence in the instant case.

10. I have gone through medical literature from standard books and the published articles. The Liver transplantation is a standard life-saving procedure for the treatment of many end-stage liver diseases. The success of transplant procedure may be limited by infectious complications. Most fungal infections occurred within one month of liver transplant surgery. Bacteria, and less commonly Candida infections, remain the predominant pathogens during the immediate post-operative period, especially during the first month. The drug-resistant strains induce infection. Due to potent immunosuppressive therapy to prevent allograft rejection is the cause of opportunistic Cytomegalovirus and Aspergillus sp. infection.

The patients with debility, malnutrition, hyper alimentation, antibiotics, steroids, indwelling catheters, diabetes mellitus, and surgical procedures—especially those involving the gastrointestinal tract. It is estimated that up to 80% of liver recipients will develop at least one infection during the first year after transplantation, and, while most are successfully treated, some will result in death. Indeed, opportunistic infections are a leading cause of death during the first three years after liver transplantation and often, the diagnosis of these infections is delayed because, as part of allograft-conserving strategies, immunosuppressive therapy diminishes inflammatory responses, and the clinical signs of infection may be blunted or absent, leading to delayed diagnosis and treatment. An important concern is whether infections are associated with rejection of the liver transplant. The precise diagnosis of rejection in liver transplant recipients is

often difficult, and tissue evidence is not always available. It is also known that steroid treatment in a 3-month period prior to transplantation lead to subsequent development of fungal infections.

11. This Commission, vide its Order dated 28.05.2014, sought an expert opinion from Medical Board of AIIMS, New Delhi. The expert report of the Medical Board dated 29.07.2015 mentioned as "that Indraprastha Apollo Hospital and others were not negligent in treatment that was rendered to Late Sh. Umesh Pandey."

12. Recently in the case of **Dr. S.K. Jhunjhunwala vs Mrs. Dhanwanti Kumar,** Civil Appeal No. 3971 of 2011, decided on 01.10.2018, the Hon'ble Supreme Court was confronted with the legal question as to how and by which principle, the court should decide on the issue of negligence of a doctor and hold him liable for medical negligence. It was held that a doctor or surgeon cannot assure and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100 % for the person operated on. The Hon'ble Supreme Court while allowing the appeal held that a professional may be held liable for negligence on one of two findings: either they did not possess the requisite skills that they claimed to have, or they did not exercise, with reasonable competence in the given case, the skill which they did possess. The fact that a defendant charged with negligence acted in accordance with the general and approved practice is enough to clear him of the charge. While referring to earlier judgment in the case of **Jacob Mathew vs. State of Punjab** (2005) 6 SCC 1, the court held that the human body and its working is nothing less than a highly complex machine and a physician would not assure the patient of full recovery in every case. The only assurance that such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which they are practising and while undertaking the performance of the task entrusted to them, they would be exercising their skill with reasonable competence.

13. Based on the foregoing discussion, the Complainant failed to conclusively establish deficiency in service and medical negligence on the treating doctor and the hospital.

The Complaint fails and is dismissed.

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DR. S.M. KANTIKAR
PRESIDING MEMBER