

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 974 OF 2015

1. BABY VANI BHATTACHARYA
(THROUGH HER FATHER- MR. PARTHA SARTHI
BHATTACHARYA) RZ-P--42/367, DAYAL
PARK, WEST SAGARPUR,
NEW DELHI-110046

2. UNITED INIDA INSURANCE COMPANY
LIMITED
54, JANPATH, CONNAUGHT PLACE,
NEW DELHI-110001

.....Complainant(s)

Versus

1. DR. SURANJIT DUTTA, M.S.
(OBSTETRICIAN & GYNAECOLOGIST), KHANNA
NURSING HOME, C-4F/ 245, JANAKPURI,
NEW DELHI-110058

2. KHANNA NURSING HOME,
C-4F/ 245, JANAKPURI,
NEW DELHI-110058

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Complainant :

For the Opp.Party :

Dated : 01 Jun 2021

ORDER

Appeared at the time of arguments

For Complainant : Ms. Surbhi Mehta, Advocate

Mr. S.K. Roy, Advocate

For OPs Nos. 1 & 2

Mr. Anoop K. Kaushal, Advocate
:
Ms. Atishaya Kaushal, Advocate

For OP No. 3

: NEMO

Pronounced on: 1st June 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The Complainant is a 5 year old minor baby girl and the present Complaint was filed by her father and the natural guardian Shri Partha Sarthi Bhattacharya (hereinafter referred to as the 'Complainant/Patient') under Section 21 of the Consumer Protection Act, 1986 (in short "the Act") against the Opposite Parties who were responsible for the alleged medical negligence resulted delivery of Hydrocephalus baby.

COMPLAINT:

2. On 22.02.2013, the Complainant's wife during her 2nd pregnancy consulted Dr. Suranjit Dutta- the Obstetrician & Gynecologist - (hereinafter referred to as the "Opposite Party No. 1") at Khanna Nursing Home (hereinafter referred to as the "Opposite Party No. 2"). She categorically informed the doctor about her first daughter suffering from 'Autism' and therefore requested to take every precaution and to carryout possible diagnostic tests to avoid any physical and mental defect to her 2nd child. Throughout 9 months of pregnancy, she was under the Antenatal care (ANC) of Dr. Suranjit Dutta. It was alleged that the Opposite Party No. 1 conducted first Ultrasonography (USG) on 13.04.2013 and thereafter doctor never advised 2nd level USG. The patient delivered healthy female baby on 24.10.2013, it was normal delivery. The mother and the child were discharged on 25.10.2013. Thereafter, on 11.11.2013, the Complainant noticed that the baby's head had started to swell and consulted the Pediatrician Dr. Dinesh Goyal in the same hospital. After MRI and other lab investigations it was diagnosed that the baby was suffering from an incurable congenital disease "Gross Communication Hydrocephalus". The parents had discussion with few other doctors and learnt that Hydrocephalus could have been diagnosed easily during early pregnancy and timely aborted the unwanted pregnancy.

3. On 19.11.2013 the baby underwent VP Shunt surgery at Shri Balaji Action Medical Institute and discharged on 28.11.2013. The shunt was implanted through her head up to her stomach. Thereafter, on 14.12.2013 baby developed infection (meningitis) and again admitted to Shri Balaji Action Medical Institute. Baby was treated with numerous antibiotics and other medicines and discharged on 05.01.2014. Again at 3rd occasion the baby was admitted on 11.01.2014 for meningitis. The doctor surgically removed the VP shunt and the baby was discharged on 12.03.2014.

4. Being aggrieved by the alleged negligent treatment by the Opposite Parties, the instant Consumer Complaint was filed before this Commission, praying compensation of Rs. 2 crore with interest @24 % p.a. for the Opposite Parties.

5. The Opposite Parties Nos. 1 & 2 filed their joint written version and denied any negligence during the treatment of mother and baby. It was submitted that the Opposite Party No. 1 was a qualified Obstetrician and had experience of 27 years, conducted 8000 to 9000 deliveries including LSCS and other surgeries. The Opposite Party No. 2 is owned by a Surgeon Dr. Vivek Khanna. It was submitted that the 1st USG was conducted on 13.04.2013 at the Opposite Party No. 2 hospital and baby was found to be normal. The Opposite Party No. 1 advised Triple test and USG at 16 weeks of pregnancy, but it was denied by the mother. However, later on she brought a USG report from Janta x-ray Centre; which reported as normal baby. It was further submitted that the patient was irregular during ANC check-up, did not follow the instructions. She was called for anomaly scan after 3 weeks, between 17 to 20th week of pregnancy but she came after 5 ½ weeks (late after 18 days). It was 21 weeks 3 days; therefore as per law the termination of pregnancy was prohibited. In case if minor changes in ventricular size of brain detected, it could be spontaneously cured before birth or could be treated after birth. The Complainant has not filed any Medical Certificate about the said anomaly from any Govt. authority.

6. The United India Insurance Company Ltd. was impleaded as the “Opposite Party No. 3”. It adopted the written version of the Opposite Parties Nos. 1 & 2 and submitted that the extent of liability would be as per the terms of Professional Indemnity insurance policy.

7. We have heard the argument from the learned Counsel on both the sides.

8. The learned Counsel for the Complainants reiterated the facts. The Complainant filed few decisions of the Hon’ble Supreme Court and this Commission as listed below:

(i) *Dr. J. J. Merchant and Ors. Vs. Shrimati Chaturvedi, AIR 2002 SC 2931;*

(ii) *Kishore Lal vs. Chairman, Employees’ State Insurance Corporation, AIR 2007 SC 1819;*

(iii) *Dr. A. S. Chandra vs. Union of India, 1992 (1) ALT 713;*

(iv) *Savita Garg (Smt.) Director, National Heart Institute (2004) 8 SCC 56;*

(v) *Minor Margesh K. Parikh vs. Dr. Mayur H Mehta 2011 (1) SCC 31;*

(vi) *V. Krishnakumar Vs. State of Tamil Nadu & Ors. MANU/SC/0727/2015;*

(vii) *Wilfred D’mello vs. Dr. Manoj K. Dhruve & Anr. III (2013) CPJ 276(NC);*

(viii) *Laxman Vs. Trimbak (1969) 1 SCR 206;*

(ix) *Archana Vs. Tarun Kumar Vohra, MANU/QI/0055/2008;*

(x) *Nizam Institute of Medical Sciences vs. Prasanth S. Dhanaka & Ors., MANU/SC/0803/2009;*

(xi) *Dr. G. Viveknanda Varma vs. Chinta Bharamaramba & Ors., 3 (2006) CPJ 104 (NC);*

(xii) *Gourikutty vs. Raghavan 2002 ACJ 1356;*

(xiii) *V. Kishan Rao vs. Nikhil Super Specialty Hospital & Anr. (2010) 5 SCC 513*

9. The Opposite Parties reiterated their preliminary objections on the maintainability of Complaint, the inflated claim and it could not be decided summarily as it needs voluminous evidence. On merit the learned Counsel for Opposite Parties vehemently argued that the 1st USG was conducted on 13.04.2013, for assessment of the viability and anatomical structure of the fetus. It was found normal. There was no specific clinical dilemma; therefore Doppler, NST and Cardiotocography were not advised. As there was past history of the 1st child suffering from Autism, the Opposite Party No. 1, to rule out congenital fetal anomalies, advised 2nd level USG and Triple Test on 11.05.2013. On 13.07.2013, the Opposite Party No. 1 examined the patient and found that there was no edema over feet and the fetal head was free. On 08.10.2013, the colour Doppler study of the fetus from Dr. P. Grover was advised. It was submitted that to mislead the commission the complainant intentionally did not file discharge summary of mother and the newborn which mention the head circumference. In the immunization card baby's head circumference was written. The Counsel further argued that if it was the case of congenital hydrocephalus, the baby had a large head and the normal vaginal delivery was not possible.

DISCUSSION and CONCLUSION :

10. We note that the Complainant has not filed the USG images done on 11.05.2013 and the Doppler report dated 08.10.2013. It is pertinent to note that the Complainant filed one RTI reply issued by AIIMS (Annexure – D) dated 27.06.2014 was general disclosure of antenatal investigations. It was neither an expert opinion nor had any evidential value in the instant case. As discussed above, the patient did not follow the instructions of the Opposite Party No. 1 to visit every 15 days, undergo USG and Colour Doppler study. The head circumference (OFC) was measured by the Pediatrician Dr. Dinesh Kumar Goyal, it was 33.5 cm, normal.

11. We have gone through the standard text book of Obstetrics and Gynecology namely "Williams Obstetrics", "Principles & Practices of Obstetrics & Gynecology for Post Graduates". According to the medical literature, the Congenital hydrocephalus is the condition present at birth, caused by a complex interaction of genetic and environmental factors during fetal development. It is now often diagnosed before birth through routine ultrasound. The classic symptom of hydrocephalus is that the head is larger than normal. The doctor may notice it when the baby is born or within the first few months of life. The growth of head in normal baby is more during the first year, but with congenital hydrocephalus, the head may grow faster than the normal rate for a baby's height and weight. Few newborns develop special variety of hydrocephalus few days after birth. It is known as communicating hydrocephalus which is mostly caused by meningitis or

subarachnoid bleeding or due to congenital or idiopathic causes. The mild variety of ventriculomegaly many times reverts back to the normal. Early treatment before age 4 months is important to help limit or prevent brain damage. Treatment focuses on reducing the amount of fluid in the brain to relieve pressure. In most cases, the doctor places a flexible tube, called a shunt, in the brain to drain the fluid. The shunt carries fluid to another part of the body (usually the belly or the heart), which then absorbs the fluid. The shunt may stay in the brain for life, though it may have to be fixed or replaced later if it becomes blocked or infected.

12. Moreover, it is apparent from the record that after 16 weeks, the patient did not turn up but came to the Opposite Party No. 1 on 19.06.2013 i.e. at 21 weeks 3 days and even if there was any anomaly the termination of pregnancy was not legally allowed in India after 20 weeks. If the enlargement of head in this case was started before 20 weeks, the size of head would have been grossly enlarged and it could be easily detected at the birth.

13. The Hon'ble Supreme Court, in its catena of judgments, discussed about the duty of medical professionals and what constitutes medical negligence. It is apt to recollect the words of the then Hon'ble Chief Justice of India, when he said in **Jacob Mathew's case** (2005) SSC (CrI) 1369, which reads as under:

“The subject of negligence in the context of medical profession necessarily calls for treatment with a difference. There is a marked tendency to look for a human actor to blame for an untoward event, a tendency that is closely linked with a desire to punish. Things have gone wrong and therefore somebody must be found to answer for it. An empirical study reveals that background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with the medical practitioner, and equally it may not. The inadequacies of the system, the specific circumstances of the case, the nature of human psychology itself and sheer chance may have combined to produce a result in which the doctor's contribution is either relatively or completely blameless. The human body and its working is nothing less than a highly complex machine. Coupled with the complexities of medical science, the scope for misimpressions, misgivings and misplaced allegations against the operator i.e. the doctor, cannot be ruled out. One may have notions of best or ideal practice which are different from the reality of how medical practice is carried on or how the doctor functions in real life. The factors of pressing need and limited resources cannot be ruled out from consideration. Dealing with a case of medical negligence needs a deeper understanding of the practical side of medicine. The purpose of holding a professional liable for his act or omission, if negligent, is to make life safer and to eliminate the possibility of recurrence of negligence in future. The human body and medical science, both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability.”

It was further observed that:

“When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.”

14. **In another case of Poonam Verma v. Ashwin Patel & Ors.**, (1996) 4 SCC 332 where the question of medical negligence was considered in the context of treatment of a patient, it was observed as under:-

"40. Negligence has many manifestations - it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or Negligence per se."

15. In the instant case, Dr. Suranjit Dutta, the Opposite Party No.1 advised proper diagnostic tests during pregnancy to rule out anomaly. It was a reasonable degree of skill and knowledge. Therefore, he cannot be held guilty of negligence by any stretch of imagination.

16. Based on the forgoing discussion, in our considered view, the Complainant has failed to conclusively establish deficiency / negligence on the part of the treating doctor / the hospital.

The Complaint is dismissed.

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER