NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1951 OF 2017

(Against the Order dated 08/08/2017 in Complaint No. 1/2012 of the State Commission Maharashtra)

1. THIRTHANKAR SUPERSPECIALITY HOSPITAL & 2 ORS.
NEAR CHANDAK MANGAL KARYALAYA, GADDM PLOT, AKOLA.
AKOLA
MAHARASHTRA.
2. DR. PRASHANT MULAWKAR.
THIRTHANKAR SUPER SPECIALITY HOSPITAL, NEAR CHANDAK MANGAL KARYALAYA, GADDM PLOT, AKOLA.
AKOLA
MAHARASHTRA.
3. DR. RAJENDRA SONONE.
ANAESTHETIST, MILK DIARY ROAD, JAWAHAR NAGAR.
AKOLA
MAHARASHTRA. .....Appellant(s)

Versus

1. MANZOOR HUSSAIN NADEEM
GULBERG, AZAD COLONY, KAULKHED ROAD, AKOLA.
AKOLA
MAHARASHTRA. .....Respondent(s)

BEFORE:

HON'BLE DR. SADHNA SHANKER,PRESIDING MEMBER

FOR THE APPELLANT : DR. S. GOPAKUMARAN NAIR, ADVOCATE WITH
MS. PRIYA BALAKRISHNAN, ADVOCATE

FOR THE RESPONDENT : MR. MANOJ V. GEORGE, ADVOCATE

Dated : 23 November 2023

ORDER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 08.08.2017 of the State Commission in complaint no. 01 of 2012, whereby the complaint of the complainant was partly allowed and the appellants – opposite parties were directed to pay jointly and severally a compensation of Rs. 20,00,000/- with interest at the rate of 9% p.a. from the date of complaint i.e. from 05.01.2012 till payment along with cost of Rs. 10,000/- to the complainant.

2. Heard the learned counsel for the appellants – hospital & doctors and the learned counsel for the respondent – complainant and perused the record including the State Commission's impugned Order dated 08.08.2017 and the memorandum of appeal.

3. The facts of the case are that Ms. Huma, the 27 years old daughter of the complainant (herein after referred to as the 'patient'), whose only one right side kidney was functioning and her left side kidney was not functioning since birth, was leading normal life. She was suffering from fever one month prior to her death. Initially, she was treated by Dr. S. M. Agarwal at Akola. Dr. Agrawal advised various tests including sonography to the patient and the same were got done. After considering tests reports including sonography report, Dr. Agarwal advised her to consult Dr. Prasanth Mulawkar, opposite party no. 2, who has his own hospital at Akola. On 26.07.2010, after examining the patient and considering all the reports, Dr. Mulawkar stated that the right side kidney of the patient is affected due to problem of urinary bladder and prescribed some medicines from time to time. She remained hospitalized for 02 days. As the patient did not feel any relief, she again went to the Dr. Mulawkar on 14.08.2010 and at that time on pathological tests, when it was found that her serum creatinine was slightly more than normal limit, Dr. Mulawkar advised her to undergo minor operation of right side kidney called as stanting of the kidney. It is alleged that before conducting the operation, Dr. Mulawkar informed the complainant and his wife that the said operation is not complicated one and the surgery is risk free and there will be no danger to the life of patient and that the patient will be discharged from the hospital after operation in a day or two. Therefore, the complainant and his wife agreed to get his daughter operated and the patient was admitted in the hospital of Dr. Mulawkar, opposite party no. 2 on 16.08.2010. It is further alleged that Dr. Mulawkar informed that he had to perform 09 operations during that day and the patient would be third in sequence and accordingly on 16.08.2010 at about 11.00 a.m. the patient was taken to the operation theatre. The opposite party no. 3 administered anesthesia to the patient before operation and the operation was conducted successfully. After the operation the patient was taken to the post operation care room for keeping her under observation.

4. The allegations of the complainant are that in the post-operative care room, no competent doctor kept watch on physical condition of patient, also from 2.30 p.m. till 7.00 p.m. nobody came to record her blood pressure, pulse rate, respiration, temperature after every hour and the patient was not placed on any monitoring machine after operation and the she was not breathing normally. However, Dr. Zuber Nadeem a unani practitioner, brother of the patient, examined her pulse and found that pulse rate was not normal. Dr. Zuber Nadeem tried to contact the appellant no. 2 and the appellant no. 3 to see the patient but they did not come to the post-operative care room to see the condition of the patient and Dr. Mulawkar was busy in conducting other operations and did not come to see the patient and the health condition of the patient started deteriorating and by 7.00 p.m. her pulse rate was very alarming. When nobody came to see the patient, Dr. Zuber Nadeem called Dr. S. M. Agrawal, who came at 7.45 p.m. to the hospital and examined the patient and found that her blood pressure was not stable, conducted ECG, pulse rate was very high. On seeing that the condition of the patient is deteriorating, Dr. S. M. Agrawal called another expert Dr. Pradeep Chandak in the hospital. It is alleged that at that time also Dr. Mulawkar, the opposite parties no. 2 and Dr. Sonone, opposite party no. 3 did not come out of the operation theatre to see the deteriorating condition of the patient. Finally, Dr. Agrawal advised the complainant that

the patient would be taken to Shyamdeep Hospital for C.T. scan where the said facility is available. As per advice of Dr. S. M. Agarwal, the patient was taken to Shamdeep Hospital and Critical Care Centre, Akola at 9.00 p.m. on 16.08.2010 where the patient was admitted in a serious condition and despite the treatment in the Shamdeep Hospital and Critical Care Centre, Akola, unfortunately she died at about 1.30 a.m. in the night of 16.08.2010 and 17.08.2010. His further allegation is that during the operation, the blood pressure of the patient was not normal as per medical standard and as the proper antibiotics were not given either during operation or after operation to prevent septicaemia, septicaemia developed within few hours after operation. It is alleged that prior to operation, the blood pressure of the patient was fluctuating and from the record it is revealed that prior to operation her pulse rate was 100 and blood pressure was 96/66 at about 11.10 a.m. and during operation her pulse rate was 68 and blood pressure was 86/49. His further allegation is that Dr. Rajendra Sonone Patil, being the anesthetist is equally responsible to monitor these vital parameters of the patient before operation, during operation and even after the operation. Ultimately, the complainant through his advocate issued notice to the opposite parties calling upon to pay compensation of Rs. 25,00,000/- to him for causing the death of the patient for negligently discharging their professional duties. The opposite party no. 2 gave reply on 25.01.2011 and then again on 21.02.2011 through his advocate and denied the averments made in the notice of the complainant.

5. The complainant has filed this complaint before the State Commission alleging medical negligence on the part of opposite parties and prayed for compensation of Rs. 25,00,000/-.

6. The appellants – hospital & doctors contested the complaint by filing written version before the State Commission and stated that there is no dispute that the patient had only one functional kidney (right kidney) and the other kidney (left kidney) was non-functional. The patient was obese and had a problem of chronic urinary tract infection, which is serious in case of patient as she was having only one functional kidney. The patient was being treated by a well-known physician Dr. S. M. Agrawal but the patient was not responding to the treatment and due to acute urinary tract infection, the patient was suffering from fever. Therefore, she was referred to Dr. Mulawkar. There, all the investigations were carried out and it was revealed that the patient had severe kidney infection and was therefore a probable case of Pyelonephritis. Kidney was not normal and acute infection coupled with higher blood creatinine level were the confirming factor and that the fact of parenchyma of the kidney was damaged had become apparent from the said investigations. It is also stated that the patient was also suffering from thyroid disorder (hypothyroidism) and obesity. Urine culture examination revealed that the infection was a bacterial infection with very significant colony and that even though the patient was suffering from chronic infection, the W.B.C. count had not increased, therefore, it is clear that the body defence mechanism was not responding otherwise there would have been substantial increase in W.B.C. count. It is stated that the medicine was given but there was no significant response to the medicine.

7. Learned counsel for the appellants submitted that the patient had chronic urinary tract infection coupled with failure of body defence mechanism and the procedure of stent implantation is a complicated one because the patient had only one functional kidney and not a minor procedure and that the patient had a high risk and all these details had been explained to the complainant and brother of the patient. He further submits that due to obstruction in the kidney, the technique of stent implantation which the doctor adopted, is a well approved

technique, therefore, he had opted for the said technique and there is no negligence on the part of the hospital & the doctors. He further submits that as the patient was a high risk patient, all probable complications were explained to the complainant, his son and the patient herself and the complainant had read the special high risk consent as well as the conditions of the regular printed consent and signed the consents. He further submits that the anesthetist thorough preoperative assessment of the patient was done by the anesthetist as per standard protocols.

8. During the course of hearing before us, learned counsel for the appellant submitted that after the operation, the patient was kept inside the operation theatre for recovery for sometime and then shifted to Room No. 17, a recovery room, which is equipped with all emergency facilities and the patient was continuously monitored in the recovery room and when the patient developed rigors at about 11.45 a.m. Dr. Sonone, opposite party no. 3 (anesthetist) had immediately attended the patient, temperature and pulse rate were recorded and necessary medication was also administered. It is stated that the doctor had taken the temperature at 12.00 noon and all other parameters were constantly checked. It is further submitted that at about 1.00 p.m., the patient was responding to verbal commands and the pulse rate was 120 per minute, SPO2 was 96% and the patient was sleeping, though drowsy but arousable. Dr. Mulawkar evaluated the patient. When once again at about 3.30 p.m. the patient developed rigors, she had mild fever, inj. Lovofloxacin (IV) was given. Dr. Sonone monitored the patient from time to time and when the condition of the patient continuously deteriorating, Dr. Sonone called Dr. Agrawal and examined the patient. He further submits that not only Dr. Sonone but also the other associate doctors were also looking after the patient. Dr. Pradeep Chandak was also called to monitor the patient to the Critical Care Unit and the patient was shifted to Critical Care Unit of Shamdeep Hospital in ambulance with all support and after shifting, hectic steps were taken but the patient had poor GC, Hypotension, bilateral crepts. The patient developed severe metabolic acidosis and at about 12.30 a.m. (midnight) the patent went in cardiac arrest and the patient died. Learned counsel for the appellants submits that all best efforts to save the patient were taken and there is no negligence on the part of the hospital and doctors and the complaint is liable to be dismissed.

9. He also argued that the State Commission has relied on the expert opinion of Dr. Muhammad Naseeruddin, Chief of Hospital of Internal Medicine, Missouri Delta Medical Centre, USA. It is alleged that he was a relative of the patient and was not available for cross examination. The report is reproduced here for ready reference:

i. The indication, all the risks benefits and alternatives should have been discussed with the patient.
ii. In a patient with non visualization and suspected absence of one kidney, abnormal anatomy and vasculature should have been suspected and procedure should have been performed under direct visualization or CT guidance. Higher possibility of complications including bleeding and death should have been suspected and discussed with the patient and family.
iii. Post operatively patient should have been monitored with recording of frequent vital signs in a recovery room. It is a standard to observe a patient till alertness is regained.
iv. This patient remained comatose for hours. Nobody even identified it and understood the seriousness of it. No effort was done to identify the cause of this prolonged comatose state. No vital signs were monitored or even checked. No physical examination was

done to see if she had a hypovolemic shock due to internal bleeding from a blind procedure. No blood count was done to check her haemoglobin status. No blood cultures were done to identify any septic shock. No empiric antibiotics were administered to treat any suspected septic shock. No electrolytes like potassium level were checked to see if there were any potential lethal derangements. No ECG was monitored or even done to see if she had any arrhythmia. In short practically no care was provided despite family's attempt to draw attention towards it.

10. Learned counsel for the complainant submitted that this is a case of negligence in post operative care. He further pointed out that since the patient was admittedly having only one kidney, obese and having thyroid and when she was admitted, she had severe urinary traction infection, she was a high risk patient, high standard of medical care was required in her case. He also pointed out that the affidavits of Electronic Expert, Dr. S. M. Agarwal and Shri Shrirang Samadhan Lawale were not filed before the State Commission, therefore, the same cannot be permitted to be filed at the appellate stage and the appeal has to be decided only on the basis of the pleadings and proof filed before the State Commission. He also contended that no affidavit of treating doctor has been filed in this case. He further submits that if Dr. Sonone had examined the patient in the recovery room from time to time after the surgery and had prepared the notes in the operation theatre, what prevented him to write his observation on the bed continuation sheet and since the appellants filed the documents at a belated stage i.e. written statement on 18.06.2012, affidavit / evidence of Dr. Mulawkar on 12.10.2015 and the notes prepared by Dr. Sonone had been filed on record on 02.08.2016, after almost 05 years and 06 months, no reliance can be placed on these documents.

11. He further submitted though the appellants claimed that this is a superspeciality hospital and have facilities to treat all kinds of patients but it lacks basic infrastructure. There are no intensive care unit and CT Scan machine and proper trained staff at the hospital. The recovery room where post operative patients are kept has no monitoring system available to monitor the patient.

12. Learned counsel further submits that the photograph filed at page 128 of paper book clearly establishes that the patient was shifted from operation theatre to recovery room at about 10.57 a.m. On the contrary, anesthesia record shows that Dr. Sonone had recorded her pulse rate and blood pressure during the course of operation theatre at 11.10 a.m. and 11.20 a.m. and as per photographs no. 1 to 20 filed by the appellant, the patient was in recovery room. Similarly, photo no. 14 shows that at 11.13 a.m. her mother is pressing her legs. He further submits that as per record Dr. Sonone and Dr. Mulawkar had examined the patient at 2.30 p.m. and found her pulse 130m and blood pressure 90/70 but admitted continuation sheet shows that assistant Suruchi had examined the patient at 2.30 p.m. and her pulse rate was found 100 m. and BP was 100/60. He further submits that as the documents filed are contradictory, no reliance can be placed on these photos and notes of anesthetist. He further submits that the consent form obtained from the son of the respondent do not show that the patient was a high risk patient and burden of proof was on the appellants to establish that septicemia was diagnosed at the earliest stage but the appellants failed to establish that they diagnosed the patient to be suffering from septicemia at the earliest possible stage. He further submits that Dr. Mulawkar stated that he had informed the complainant and brother of the patient about the high risk. When there is high risk in conducting the surgery, why the surgery was conducted when the hospital does not possess ICU facility.

13. The main point for consideration is whether there was medical negligence on the part of the appellants during the post operative care or not.

The copy of guidelines on Urological Infection which were relied by the appellants / O.Ps. as quoted by the State Commission shows as under:

> Patients with urosepsis should be diagnosed at an early stage, especially in the case of the a complicated UTI. The systemic inflammatory response syndrome, known as SIRS (fever of hypothermia, hyperleucocytosis or leucopenia, tachycardia, tachypnea) is recovered as the first even in a casecade to multi-organ failure. Mortality is considerably increased when severe sepsis or septic shock are present, though the prognosis of urosepsis is globally better than sepsis due to other infectious sites.
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> The treatment of urosepsis calls for the combination of adequate life supporting care, appropriate and prompt antibiotic theraby, adjunctive measures (e.g. sympathomimetic amines, hydrocortisons, bllod glucose control, recombinant activated protein C and the optimal management of urinary tract disorders (IaA). The drainage of any obstruction in the urinary tract is essential as first line treatment (IbA)
>
> Urologists are recommended to treat in collaboration with intensive care and infectious diseases specialists (IaB).

14. The patient had only one kidney and severe urinary tract infection. It is clear that there was no Intensive care or infection disease specialist available during the post operative care as per the guidelines. Further, it is admitted that there was no ICU facility and as the surgery was high risk surgery, the appellant ought not to have proceeded to conduct the operation ignoring the risk involved. In the case of **Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and Ors. (2009) 9 SCC 221** it has been held by the Hon'ble Supreme Court that "In our opinion, if hospitals knowingly fail to provide some amenities that are fundamental for the patients, it would certainly amount to medical malpractice. In a hospital, conducting operation and that too, especially on high risk patient, the admitted lack of ICU is a fundamental amenity in medical care and lack of the same amounts to deficiency in service.

15. Since the affidavits of Electronic Expert, Dr. S. M. Agarwal and Shri Shrirang Samadhan Lawale are filed at the appellate stage, no reliance can be placed on them. As regards the point that the surgery involves high risk and is complicated one, it is expected from the appellants that they are aware of the risk involved in the said surgery and were supposed to take abundant care and precaution not only during operation but also after the operation. But from a perusal of the consent letter, it does not reflect that the surgery involved high risk and is complicated one but it only gave permission to conduct the operation. Therefore, it cannot be inferred from the consent letter that the information of surgery being high risk and complicated one is given to the complainant or his son. The photographs clearly shows that the patient was taken to post – operative care room at about 10.57 but the anesthesia notes reflects that the pulse and blood pressure were recorded in the operation theatre at 11.10 and 11.20. It appears that the notes have not been prepared at the time of operation and are an afterthought.

16. So far as the point of development of septicemia is concerned, the appellants had failed to establish that the patient was suffering from septicemia before conducting the operation and it came to the knowledge of the complainant through the death certificate. Even if it is presumed that the patient was suffering from Septicemia, the appellants ought not to conduct the operation even when the basic facilities like intensive care unit were not available in the hospital. The appellants have also brought no evidence on record to show that either they prescribed or ensured that all the necessary pre-operative tests were done on the high risk patient prior to surgery to see that the patient was fit for surgery. It is seen that the Enquiry Committee Report sent by the Government Medical College and Superspeciality Hospital, Nagpur to the Police Station, Akola vide letter dated 12.09.2011 states as under;

> The details of the patients pre operative checkup reports have not been made available in the papers received so it is not possible to given an opinion about whether the condition of patient was suitable for surgery. The surgeon and anaesthetist examine the patient and take a decision as to whether the condition of the patient is suitable for surgery or not.
>
> This is clearly lack of due care and amounts to deficiency in service.

17. As regards the point that no competent doctor kept watch in the post operative care room is concerned, the appellants filed the documents at the belated stage showing that the patient was attended from time to time. Had the documents been available with the appellants, the said documents should have filed at the appropriate time before the State Commission. It appears that these documents are afterthought. No concrete evidence has been produced by the appellants to prove that the appellants attended the patient for a long period of 4 ½ hours after her operation. Moreover, at one place the appellants averred that Dr. Sonone and Dr. Mulawkar attended the patient at 2.30 while at another place, it was mentioned that Assistant Suruchi attended the patient at 2.30 p.m. As the documents are contradictory to each other, the documents do not appear to be authentic. It is apparent that the patient was not attended from 2.30 p.m. to 7.00 p.m.

18. In view of the foregoing, we find that the appellants have not been able to prove that there was proper care and attention during the post operative period and the findings of the State Commission in this case suffers from no illegality or infirmity warranting any interference.

19. The appeal is therefore dismissed, with no order as to costs. Pending I.A., if any, stands disposed of with this Order.

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DR. SADHNA SHANKER
PRESIDING MEMBER