NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 183 OF 2014

1. DR. K. RAJESH REDDY,
S/o Shri K. Venugopal Reddy, R/o Plot No. 15, Flat 101, Giriteja Residency,
SECUNDERABAD - 500014. ....Complainant(s)

Versus

1. YASHODA HOSPITAL & 2 ORS.
Raj Bhawan Road, Somajiguda,
HYDERABAD - 500082.
2. DR. JAYDIP RAY CHAUDHARI, NEURO PHYSICIAN,
HOD Neurology, Yashoda Hospital, Raj Bhawan Road, Somajiguda,
HYDERABAD - 500 082
3. NEW INDIA ASSURANCE CO. LTD.
R-7-A, Behind M.C.D. Office, Sri Aurobindo Marg, Green Park Extension, Green Park,
NEW DELHI - 110 016
4. NEW INDIA ASSURANCE CO. LTD.
Also at - 6-3-862/AB, 2nd Floor, Lal Bynglow, Green Lands, Ameerpet,
HYDERABAD
ANDHRA PRADESH ....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT

FOR THE COMPLAINANT : FOR THE COMPLAINANTS : MR. NIMISH CHIB, ADVOCATE
MR. JATIN RANA, ADVOCATE

FOR THE OPP. PARTY : FOR OPPOSITE PARTIES – 1 & 2 : MR. AMIT AGARWAL, ADVOCATE
MS. SANA JAIN, ADVOCATE
MR. ARJUN CHHIBBAR, ADVOCATE

Dated : 18 November 2024

ORDER

1. This is a case of medical negligence where the Complainant has alleged that the Opposite Party No. 2 failed in his diagnosis to treat the Complainant for CNS Vasculitis that has been now confirmed from the medical reports on record, and instead persisted with his line of diagnosis of Multiple Sclerosis (MS). The Complainant has also based his contentions on the strength of the findings and the reports of the National Institute of Mental Health and Neuro-Sciences (NIMHANS), Bangalore. The said report had also been summoned by this Commission that was dispatched to this Commission vide a case summary report dated 20.06.2017.

2. The Complainant alleges that he has suffered severe spasticity in the lower limbs and therefore, is unable to effectively walk and discharge his physical functions. His contention is that on account of an incorrect diagnosis, medicines were incorrectly administered and the line of treatment adopted by the Opposite Party was not required at all. It is also alleged that the tests carried out also did not confirm multiple sclerosis and hence not only the diagnosis, but also ignoring the expert opinion from NIMHANS, the treatment was conducted by the Opposite Party which amounts to a gross negligence causing suffering and loss to the Complainant, who has been virtually crippled on account of medical negligence on the part of the Opposite Party No. 2.

3. The Complainant seems to have complaints of neurological ailments with recurring episodes that seems to have emanated with symptoms of constipation in December, 2009. He then experienced difficulty in walking in August, 2010 involving the right lower limb with weakness of the left lower limb. He also experienced urinary disturbances and it is at this stage in August, 2010 that the Complainant approached the Opposite Party No. 2, in his hospital the Opposite Party No. 1, where the Opposite Party No. 2, Dr. J. R. Chaudhary diagnosed him for multiple sclerosis (MS). This diagnosis was sought to be confirmed through oligoconal bands tests. This was rendered negative. The treatment commenced by the Opposite Party No. 2 at Yashoda Hospital on 22.09.2010 after the Opposite Party No. 2 had advised through his prescription dated 21.09.2010. The advice also included the conduct of a MRI Scan together with other tests for diagnosing the same. The Complainant was admitted and discharged on 22.09.2010 with medicines that were prescribed and are contained in discharge summary that have been filed on record. After recording the symptoms of the Complainant as well as the other background of the case including the status of his vitals, a doubt was expressed in the diagnosis about Acute transverse myelosis (?) infective (?) and demyelinating. The discharge summary records the patient to have been treated symptomatically who gradually improved and was, therefore, discharged on the same day in a stable condition. Along with other medicines that were advised, the patient was also prescribed doses of the medicines that he had to take. This discharge summary document is dated 22.09.2010 with all the aforesaid details.

4. According to the patient, he had still difficulty in walking and was feeling uncomfortable as a result whereof, he again approached the Opposite Party No. 2, who examined him on 01.10.2010 and advised an Interferon injection, namely Avonex in dosage of 1 ampule once a week to be continued for three months. This prescription dated 01.10.2020 records the same.

5. According to the Complainant, his condition did not improve and he continued to walk with the help of a stick thereafter. The next visit to the Doctor seems to be on 08.11.2010 and the prescription of that date indicates that the patient had reported that he was walking down to college and there was a later endorsement about walking with a stick.

6. His next visit appears to be on 20.12.2010 and the prescription of that date mentions the condition of the patient to be stable but records the diagnosis as multiple sclerosis. The next visit of the Complainant seems to be on 12.01.2011 where his condition has been noted as better. This was followed by another endorsement of his condition being better when he visited the hospital on 11.02.2011. The other medicines including injection Avonex were continuing.

7. The Complainant next consulted the Opposite Party on 11.07.2011 complaining of severe lower limb spasticity. It seems, on examination of the patient, he was advised the installation of Baclofen pump for being fitted in the back of the Complainant in order to directly administer medicines to the spinal area. In order to install the same, a surgery was to be

carried out which was accordingly conducted on the advice of the Opposite Party No. 2. According to the discharge summary dated 19.07.2011, the surgery was conducted on 16.07.2011 and it certifies the successful installation of the pump that was connected to the spinal catheter designed for the purpose for which it was installed. The said discharge summary dated 19.07.2011 is also on record. The Complainant was again examined on 25.07.2011 with the medicines continuing and then on 12.08.2011, it was noticed that spasticity was observed at night but otherwise the condition of the patient was stable. The administration of the medicine through the pump was of 60 ug. This, according to the Complainant, was reduced in October, 2011 for reasons best known to the Opposite Party to 25 ug.

8. The Complainant again visited the hospital on 18.11.2011 where some of the responses were shown to be better and the medicines were continued accordingly with recommendation for a MRI Scan and also a microbiological lab report to test for antibodies. The said laboratory test report dated 28.11.2011 is on record, which indicates that the test was negative. The MRI was conducted on 19.11.2011, which indicated existence of lesions and the impression recorded is extracted herein under:

IMPRESSION:

1) Diffuse altered signal in upper & lower dorsal cord with patchy contrast enhancement suggesting active lesions.

2) Small focus of enhancement in MT acquisition involving right anterolateral medulla.

As compared to previous scan done in September 2010, there is relatively increased enhancement in upper dorsal cord lesion.

For clinical correlation.

The aforesaid report indicates an increased enhancement in the upper dorsal cord lesion.

9. On 24.11.2011, the Opposite Party advised holding of avonex injection and also advised a test at the Arvind Eye Hospital and to report accordingly. The test reported negative and on 02.12.2011, the prescription records that the patient was improving and was able to stand properly. In place of avonex injection, the Opposite Party suggested replacement by Natazulimab. According to the Opposite Parties, the same is an immune modulation drug.

10. According to the Complainant, since no improvement had been shown and the lesions had increased, a fresh MRI was conducted on 04.03.2012 where the following impression was recorded:

IMPRESSION:

1) Diffuse altered signal in upper & lower dorsal cord with patchy contrast enhancement suggesting active lesions.

2) Small focus of enhancement in MT acquisition involving subcortical white matter in right insular region – New finding.

3) Subacute infarct in right caudate – New finding.

As compared to previous scan done in November, 2011 there is relatively decreased size of upper dorsal cord lesion.

For clinical correlation

11. A perusal of this report indicates that as compared to the previous scanning done in November, 2011, there were decreases registered in the lesion. Nonetheless, in order to further confirm the diagnosis and line of treatment, the Opposite Party No. 2 himself seems to have made a reference to Professor Dr. A. B. Taly, Department of Neurology, NIMHANS,

Bangalore on 06.03.2012, requesting him for his opinion and valuable suggestions. The said letter is extracted herein under:

Prof. A.B. Taly
Dept. of Neurology
NIMHANS
Bangalore Date-06/03/2012
Respected Sir,
Referring Dr. Rajesh Reddy to you for your valuable opinion. He is having significant disabilities following recurrent demyelinating testaus in spine and brain with negative oligoclonal bands in C&F and normal VEP P100 latency. His NMO Abs are negative. He was on solumedrol 6-7 and on avonex. He was put on intrathecal baclofen pump due to severe sparsity of lower limbs which helped him initially but due to new lesions on the corn and brain he was worsened again.
Kindly give your valuable submissions.

With Regards
Dr. Joydip Roy Chaudhari
MBBS MDDM (Neurology NIMHANS)
Neuro Physician HOD Neurology
Yashoda Hospital
Somajiguda, Hyderabad

12. For as assessment of the said opinion, it appears that the patient was admitted at NIMHANS for review on 21.03.2012 and was discharged on 28.03.2012. The discharge summary is extracted herein under:

NATIONAL INSTITUTE OF MENTAL HEALTH AND NEURO SCIENCES,
(Deemed University) Bangalore-29
Consultants: DR A B TALY/ DR SANJIB SINHA/ DR BINDU P S/ DR MADHU

DISCHARGE SUMMARY

Name:	Rajesh reddy	Address : Hyderabad Andrapradesh.
Age/sex:	25 y male	
Neuro number	[illegible]	
Date of admission:	21/3/12	
Date of discharge	28/3/12	
Diagnosis:	Relapsing remitting neurological illness ? etiology	
Result:	improved	

History

This 24 year old gentleman had presented with constipation since December 2009. Since august 2010 the patient had developed weakness which 1st started in right lower limbs and over 7-8 months he noticed weakness of left lower limb. Associated with spasticity, tingling & numbness. Also had urinary disturbances- difficulty in initiating, incomplete evacuation. No history of similar complaints in upper limbs. No h/o visual disturbances. Evaluated outside and was started on injection pulse methyl prednisolone f/b oral steroids following this the patient had made some improvement. Baclofen pump was inserted. Also the patient was started on interferon β. Serial MRI spine (done outside) showed multiple enhancing lesions in the thoracic cord. Also there was lesions in posterior putamen and caudate nucleus on right side which showed diffusion restriction.

Examination

BP(mm/Hg)	120/80	PR (bpm)	80	RR(cpm)	14	Temp	AFEBRILE
General physical examination	Obese						
CVS/RS/PA	WNL						

CNS

Higher mental functions were normal. cranial nerve examination was normal. Motor examination showed spasticity in lower limbs and power of 2-3/5. Plantar was bilaterally extensor. DTRs- normal in upper limbs and brisk in lower limbs. Sensory system examination showed 5-20% decrease in pin prick in lower limbs. Vibration was decreased in lower limbs.

Investigations

FBS mg %	65	S. Calcium mg %	9.1
B.Urea mg %	37	S.Phosphorous mg %	4.1
S. Creatinine mg %	0.9	T.Protein gm/dl	6
T. Bilirubin mg %	1.4	S.Albumin gm/dl	3.5
S. ALP (u/l)	83	S. Sodium meq/l	142
SGOT (u/l)	18	S. Potassium meq/l	4.2
SGPT (u/l)	34	S. Chloride meq/l	101
Lipid profile	normal	Uric acid	normal

Mandal Educational Officer

Hb (g/dl)	15.4	Total count (cells)	9200
RBC count (million/mm)	5.74	Platelet count	193000
PCV %	48.2	ESR	4
MCV (fl)	84	Vasculitic profile	normal
Urine routine	normal	Serum ACE level	normal

EVOKED POTENTIALS- normal.
CT thorax- peritracheal lymphnodes . two of which were enhancing.

Course in Hospital

This gentleman had presented with above symptoms, on reviewing details patient s illness was unlikely to be multiple sclerosis. Clinically there was no involvement of brain , optic nerve and VEP being normal. imaging showed right caudate lesion (?ischemic) and spinal cord lesions are still enhancing even after long period of immunomodulation. There was also no brain lesions suggestive of MS. A possibility of sarcoidosis, vasculitis v/s granuloma was thought of CT thorax showed peritracheal lymph nodes – two were enhancing. So etiological diagnosis may require tissue biopsy. Injection Avonex can be stopped and may require long term immunomodulation with azathioprine, cyclophosphamide.

Advise on Discharge

1. Patient is adviced to follow up with local neurologist.

Signature of Resident
SR : DR MEHUL

JR : DR CHETAN K

abtaly@yahoo.com

13. In addition thereto, Dr. A.B. Taly also sent his written opinion dated 26.03.2012, which is extracted herein under:
To,
Dr. Joydeep Roy Chaudhari
Consultant Neurology
Rajesh Reddy
23 years
N/610794
26/03/2012
Sir,
Thanks for referring case for review. Patient had consultation with Dr. Anupam Gupta for rehabilitation. On reviewing details, patient's illness was unlikely to be Multiple Sclerosis. Clinically there was no involvement of brain optic nerve & VEP being normal Imaging showed right caudate lesion (? Ischemic) and spinal cord lesion is still enhancing even after long period of immunomodulation. There is no brain lesion suggestive of MS. We considered possibility of vasculitis v/s granuloma was thought of Ct. Thorax showed peritracheal lumph nodes- two were enhancing. So etiological diagnosis may require tissue biopsy. Injection avonex can be stopped and may require long term immunomodulation was azathoprine, cyclophosphamide.
We are referring to you for further continuity care.

-Sd/-
National Institute of Mental

Health and Neuro Sciences
(Deemed University)
Hosour Road,
Bangalore-580629

14. A perusal of the aforesaid report expressed a doubt about multiple sclerosis and the possibility of vasculitis was indicated. According to Dr. Taly, the same would require etiological diagnosis through tissue biopsy. He suggested that injection aronex can be stopped and long term immune modulation drugs azathoprine cyclophosphamide should be administered.
15. The Complainant contends that in spite of this advice given by an expert in the field, the Opposite Party No. 2 did not sincerely pursue the same but azathoprine was started which is a steroid.
16. It appears that an MRI scan was again conducted on 22.06.2012 which recorded significant reduction in size of media stinal nodes. A CT Scan of the chest was also conducted on the same date. The MRI report is extracted herein under:

DEPARTMENT OF RADIOLOGY
MRI OF DORSAL SPINE WITH CONTRAST

TECHNIQUE: POST CONTRAST
T1, T2 & STIR Sagittals. T1 Sagittals. Axials & Coronals
TI & GRE Axials
STIR Coronals

FINDINGS:
Follow up case.
As compared with study dated 4/3/12.
Lesion at Di to D3 levels is reduced in size with visuulised anterior subarachnoid space
Lesion at D4 and DS levels, increased in size and intensity of enhancement Lesion at D10 and DII levels is similar in morphology and enhancement
Significant reduction in size of mediastinal nodes.

Screening of Brain:
Gliosis in infarcts of right caudate and lentiform nucleus.

For clinical correlation.

DR.SRIDHAR DEVU, DMRD.
CONSULTANT RADIOLOGIST.

17. The CT Scan impression is extracted herein under:
IMPRESSION: HRCT Chest shows
• Few discrete small mediastinal nodes.
• Left infrahilar calcific node with left upper lobe posterior
Segment calcific parenchymal nodule with minimal scarring.
• To assess for Koch's Sequelate.

18. With all this developments, according to the Complainants, since there was no progress, the Opposite Party No. 2 himself sought a second opinion from Dr. Taly, suggesting alternative immuno modulation medicines. The letter dated 08.08.2012 is extracted herein under:
To Date: 08/8/2012
Prof. A. B. Tally
Department of neurology
NIMHANS
Bangalore
Respected Sir,
Kindly Review Dr. Rajesh Reddy suffering from Recurrent Demyelinating Disease of spinal cord? Multiple sclerosis. He has received monthly Solumedrol for 5 months but has not made any functional recovery. Can we give alternative immune modulation therapy with Natalizumab / Mitoxantrone of Cyclophosphamide.
Thanking you Sir,

With Regards,
Sd/-
Dr. Jaydip Ray Chaudhuri

19. The team of Dr. Taly responded through their reply on 16.08.2012 stated that the patient seems to have made minimal improvement with a suggestion of the medicines that had been advised earlier namely azathoprine, cyclophosphamide to prevent further progression. The said response from NIMHANS team is extracted herein under:
To
Dr. Jaydip Ray Chaudhuri

Respected Sir,
Thanks for the referral.
Patient has made minimal improvement with pulse sterrich alternative immunomodulation like (pulse cyclophosphamide, azathioprine or myocophenalate mojetil) can be started as disease modifying agents and to prevent further progression.

Thanking you,
Yours sincerely
Srilesh M…
Sr. Neurology
(For Dr. AB Taly and Team)

20. The Complainant has urged that this suggestion once again confirmed that the Complainant was not suffering from multiple sclerosis and the line of treatment suggested by NIMHANS ought to have been continued which the Opposite Party No. 2 neglected by insisting upon his own line of treatment. The Complainant was admitted on 23.08.2012 for cyclophosphamide infusion and injection and was discharged on 24.08.2012, whereafter, he did not turn up for any further treatment with the Opposite Party.

21. It is also evident from the information on facts that the Complainant undertook Ayurvedic treatment thereafter and then visited other Doctors for treatment. On the strength of such opinion of other doctors, the present Complaint was filed in 2014, alleging that the Opposite Party No. 2 had proceeded to wrongly diagnose the Complainant and had adopted a wrong line of treatment which was against the expectations of the ordinary skills possessed by him as Neurologist. The Complainant had also alleged that this was against the opinion of NIMHANS and consequently, the Opposite Party No. 2 is guilty of gross negligence in worsening the case of the Complainant by not treating him according to the standard protocol of treatment that was required because of his incorrect and faulty diagnosis. It is urged that had the Opposite Party No. 2 abided by the protocols and the suggestions made by NIMHANS, the condition of the Complainant would not have deteriorated that has ultimately resulted in almost a non-functional lower limb of the Complainant.
22. The Complainant had also filed his evidence by way of affidavit and during the pendency of the Complaint, directions were issued calling upon NIMHANS to produce the documents of the treatment at NIMHANS and also a report to that effect. The said report has been filed along with all the treatment documents that are on record. The report dated 20.06.2017 is extracted herein under:

Date: 20th June 2017
Unit Consultants: Dr AB Taly, Dr S Sinha, Dr Bindu PS, Dr Madhu N

Name: Dr Rajesh Reddy,
Hospital no.: N610794
Ref: Consumer complaint No. 183/2014 dated 6th June 2017

Case Summary
Mr. Rajesh Reddy was referred to NIMHANS from Hyderabad for a second opinion in view of recurrent episodes of demyelinating illness with poor therapeutic response. He was evaluated as an in- patient from 21st March to 28th March 2012. The detailed discharge summary was provided to the patient.
Mr. Rajesh Reddy was first evaluated at NIMHANS Neurological Services on 20th March 2012 at the age of 24 years. His chief complaints were recurrent episodes of neurological illness from December 2009. The illness manifested with constipation in December 2009. This was followed by difficulty in walking since August 2010 which involved the right lower limb followed by weakness of left lower limb over the next 7-8 months. From September 2010, he developed urinary disturbances with difficulty in initiation and voiding. He also developed spasticity, tingling and numbness of both lower limbs. There was no history of similar complaints in upper limbs or any visual disturbances.

He was earlier evaluated at another center and based on the tests, he received pulse dose of intravenous Methylprednisolone in September 2010, September 2011 and February 2012 during each episode of worsening, with variable degree of improvement. In December 2010, weekly injection of Interferon was started to decrease the relapses and worsening. In April 2011, intrathecal Baclofen pur… was installed to alleviate symptoms of spasticity with partial improvement.
During his admission, serial MRIs of brain and spine (done at another centre) were reviewed with Neuro-radiologist at NIMHANS. There was involvement of spinal cord and brain with

multiple enhancing lesions in the thoracic cord. There were lesions in posterior putamen and caudate nucleus on right side which showed restricted diffusion. Patchy subcortical white matter lesions were also noted in the brain.
Overall, based on the clinical features and available investigations, a diagnosis of relapsing remitting immune mediated neurological illness was considered. Based on the symptoms profile, clinical cosarse and investigations, the differential diagnosis of multiple sclerosis-mimickers like sarcoidosis, vasculitis vs granuloma were suggested and a possibility of multiple sclerosis was considered as less likely. Further tests and follow up with referring physician were recommended. It was suggested that injection Avonex (Interferon) may be withheld and need for long term immunomodulation like pulse IV …..oids, oral azathioprine, or cyclophosphamide was discussed with the patients and his relatives. Limitations of therapeutic interventions in modifying the course of the disease were explained Rehabilitation measures for lower limb weakness and urinary symptoms were also advised by the rehabilitation experts at NIMHANS. A letter regarding his illness was also sent to the referring doctor.
He was again referred to NIMHANS on 8th August 2012 in view of lack of improvement with monthly pulse methylprednisolone for five months. After evaluation as an out-patient, alternative immunomodulators like azathioprine, cyclophosphamide, mycophenolate mofetil were advised because of poor therapeutic response to pulse methylprednisolone.
On 1st January 2013, his relatives had visited to neurology outpatient services without the patient. They briefed that patient had persistent constipation and lower limb weakness, and slight improvement of bladder symptoms. Repeat MRI of brain and spine done outside in December 2012 was reported to show …..ting and new lesions. They informed us that patient was on Ayurvedic medications and not on any recommended treatment. The relatives were advised about the need of immunomodulation He has not reported back to NIMHANS ever since.

23. Learned Counsel for the Complainant on the strength of the material on record and the reports referred to hereinabove urged that the negligence on the part of the Opposite Party No.2 regarding his faulty diagnosis and an incorrect line of treatment, that is not expected of a reasonably skilled neurologist, continued, resulting in immense damage to the Complainant for which he deserved to be compensated.
24. Responding to the aforesaid submissions, learned Counsel for the Opposite Party Nos.1 & 2 has urged that the patient was looked after and cared for to the best of capability and capacity of the Opposite Party No.2 who is a neurologist of world repute. To substantiate this submission, learned Counsel has invited the attention of the Bench to Para-2 of the preliminary submissions made in the Reply/Written Statement on behalf of the Opposite Parties. The same indicates the span of the reputation of the Opposite Party No.2 in the medical field where he seems to have published a lot of articles and papers including that which are jointly published with Dr. A.B. Taly. This fact is noticeable as the opinion about the patient was also sought from him who is the head of the Department of Neurology in NIMHANS. There is also no doubt or dispute nor any comment raised about the capabilities and qualifications of the Opposite Party No.2. He, therefore, is an expert of his field and in such circumstances the capacity of the Opposite Party No.2 cannot be doubted to be capable enough of treating the Complainant.
25. Learned Counsel for the Opposite Parties also submits that all possible tests were promptly carried out. For this, it has also been pointed out that the Complainant was

accompanied by Dr. Ravi Chandra Reddy on whose reference he was being looked after by the Opposite Party No.2. Nonetheless, the Complainant had been receiving medicinal treatment even prior to consulting the Opposite Party No.2 and his pathological, radiological and other evaluations had been carried out in the past. This fact has been categorically stated in the written statement. In Para-7 (A)(III) and (IV) it is urged that the Complainant had arrived at the stage of LL 3/5 3/5 of spactititis which indicated that the Complainant could not lift his legs against even minimal resistance. He was accordingly prescribed Liofen for the same coupled with Urotone for his urinary symptoms. Even though the Complainant had registered an immediate improvement on 22.09.2010, he got himself discharged on the same day.

26. As cero spinal fluid test had been carried out at the hospital, for which a sample was collected on 23.09.2010 and the report came on 30.09.2010, confirming that the test was normal with normal protein and sugar levels which ruled out the infection of the nervous system or any active vasculitis. The multiple sclerosis through oligoclonal band report was also examined. Its negative outcome does not totally rule out multiple sclerosis.

27. It is further stated in the written statement in Para-2(A)(VIII) that since the test of vasculitis was negative, the patient was diagnosed to be suffering from a relapse of multiple sclerosis. It has been further stated in Para-X that the insulating covers of the nerves was damaged and the immune mechanism was disturbed but was curable. The Complainant also after a treatment was able to walk even though with difficulty. The contention raised in the written statement is that the Complainant on his own had been taking advice from the other doctors as well. It is on the advice and genuine efforts of the Opposite Party No.2 that the treatment of the Complainant continued with certain concessions but the entire treatment was done with due concentration and in accordance with the protocol. It is in this line that an Intrathecal Baclofen injection was administered after installing the Baclofen pump that was essential. The same had been done after due explanation and consent of the Complainant and his family members which according to the Opposite Party are duly recorded. The administration of medicines to the spinal fluid space in small dose was given on 13.07.2011 which has been categorically stated in Para-XXII that the aforesaid administration was with the consent of the Complainant and his family members.

28. The growth of new lesions which are noted in the MRI dated 19.11.2011 did register certain patchy increases and enhancement of the decease and its relapse. This brought back the patient to the Opposite Party No.2 when Eronex was halted and the NMO antibody test had been performed which was reported to be negative. Thus, steps were being taken by the Opposite Party No.2 to appropriately diagnose and treat the symptoms that were being reported by the Complainant.

29. In order to doubly make it sure and for the benefit of the Complainant that the Opposite Party No.2 made a reference to Dr. A.B. Taly in NIMHANS. It is, therefore, clear that this effort in itself indicates that the Opposite Party No.2 was treating the Complainant genuinely. Even the NIMHANS team could not provide a definite diagnostic conclusion which is evident from the responses given by Dr. Tally that have been referred to hereinabove. The possibility of multiple sclerosis had not been entirely ruled out but at the same time they did not even find vasculitis to be the confirmed disease from which the Complainant was suffering. The observations were in the nature of a doubt to be investigated and was not a confirmed opinion. Thus to say that NIMHANS had diagnosed vasculitis does not appear to be correct.

30. It has then been submitted that the suggestion of biopsy by NIMHANS could not be done keeping in view of the risky procedure and the damage that could be caused in such a situation. Consequently, the biopsy was not advisable and it is not understood as to why NIMHANS itself did not conduct the biopsy.

31. Thus, the contention on behalf of the Opposite Party is that there was no difference in the line of treatment or investigation for arriving at a correct diagnosis and the report of NIMHANS does not clinch the diagnosis of vasculitis.

32. It is, therefore, submitted that in the absence of any confirmed expert opinion led by the Complainant other than the doubtful report of NIMHANS, there cannot be an inference of vasculitis or any negligence in its treatment.

33. It is further submitted that the opinion obtained by the Complainant from Dr. D. Ravi Verma, in the shape of a certificate/document is no authentic material as it does not disclose any factor or reason for framing such opinion. Similarly, the opinion of Dr. P. Dhairyawaan is also speculated and without any basis and any evaluation of the patient. It is, therefore, urged that neither the document executed by Dr. Jaiswal or Dr. Dhairyawaan contradict the evidence which is already on record. It is in this background that it is contended that the symptoms clearly indicated multiple sclerosis and it has been explained in Para-7 (XLVII & XLIX respectively).

34. With the aid of these pleadings and evidence of the record, learned Counsel for the Opposite Party has referred the judgment in the case of Kusum Sharma Vs. Batra Hospital 2010 SC Page 480 to urge that even after the best efforts if a patient cannot be saved, does not amount to a medical negligence. It is further pointed out that there can be a genuine difference of opinion and a mere difference of conclusion cannot give rise to a presumption about gross medical negligence. It is urged that so long as the Opposite Party No.2 has performed his professional skills to the best of his ability, there cannot be any inference of medical negligence drawn against him as there is no negligence at all. It is, therefore, urged that the Complaint be dismissed.

35. Learned Counsel for the Opposite Party has also relied upon the evidence of Dr. Subhash Kaul that has not been rebutted by the Complainant. The said evidence records that the material available does not amount to certifying any gross negligence in as much as the treatment given is in accordance with the procedure known to medical science and the Opposite Party No.2 has accordingly followed the same that does not amount to any medical negligence.

36. Apart from this, written submissions have been filed on behalf of the Opposite Parties with medical literature and judgments including the judgment in the case of Dr. Harish Kumar Khurana Vs. Joginder Singh & Ors. in order to support the contentions urged before this Commission. Other than this, Literature has been relied on by the learned Counsel for the Complainant to urge that the drug which has been administered was not capable of treating the Complainant and was not in tune with the guidelines for Spasticity. The Evidence of Dr. Subhash Kaul is also not reliable in as much as even if the treatment is taken to be a possible overlapping treatment of vasculitis then it was also on the interference of NIMHANS that this did happen. There is no justification to accept the argument on this count and therefore, the medical expert evidence from NIMHANS deserves to be accepted which confirms that the Opposite Party No.2 had wrongly diagnosed and treated the Complainant which treatment was continued erroneously for 14 months. In the given circumstances, the medical negligence on the part of the Opposite Party No.2 is clearly established and hence, the Complaint deserves to be allowed.

37. Learned Counsel for the OP has emphasized on the Affidavit of Dr. Kaul particularly on the diagrams and the explanation given in order to understand the disease and its impact as canvassed by the Complainant as well as the defence in the matter.

38. From the facts on record and the diagnosis made, there is no doubt on the capability and capacity of the Opposite Party No.2 as a neurosurgeon. The MRI scan reports and the pathological test may not have been helpful exactly diagnosing the disease. The tests did not establish the claim of the Complainant about vasculitis. In between comes the report from NIMHANS on which heavy reliance has been placed by the Complainant and has been extracted herein above. The documents which have been sent along with the report dated 20.06.2017 by NIMHANS contains an evaluation by their team where one of the resident doctors indicates the diagnosis of multiple sclerosis. This is contained at internal Page-8 of the clinical history sheet prepared by the Department of Neurology. There was another opinion in between the team at NIMHANS. However, the said opinion after being discussed with Dr. Rose Dawn on 27.03.2012 indicates that the overall picture was unlikely of multiple sclerosis. However, the word vascular has been used with a question mark meaning thereby that there was no firm opinion about vasculitis as well. This was suspected but not finally diagnosed. This is reflected in the letter dated 20.06.2017 where the diagnosis is of relapse of immune mediated neurological illness. Even though multiple sclerosis was referred to less likely, there was no firm opinion about vasculitis either.

39. It is also mentioned in the said report that the patient did not return back to NIMHANS thereafter as they had undertaken Ayurvedic treatment as well.

40. In the absence of any definite opinion on this count, it is not possible to judicially come to a conclusion that the Opposite Party No.2 was guilty of gross negligence when he had taken steps that was in his opinion appropriate for treating the patient as per medical protocol. The expert opinion of Dr. Kaul also indicates that the treatment that was meted out to the Complainant on the basis of the diagnosis on record was backed up by pathological reports, radiological analysis as well as clinical examination after physically examining the patient. This entire overall effort by the Opposite Party No.2, in our opinion, does not fall in the category of a medical negligence much less gross medical negligence. The material and literature relied upon by the learned Counsel for the Complainant therefore, also does not lead to the conclusion that the diagnosis made by the Opposite Party No.2 of multiple sclerosis was perverse or contrary to norms, out of which one was the McDonald criteria. The same literature also states that spinal cord vasculitis is exceedingly rare and there are very few cases around the world that have been reported to have been diagnosed correctly. Thus, every symptom of Spasticity cannot be equated with vasculitis. One of the medical literatures on record indicates that only five such cases had been located during a 21 year period with the spinal cord involvement. Not only this, the treatment of vasculitis is almost similar to that of multiple sclerosis and the medicines administered were closely in tandem that did not create any adverse effect.

41. To confirm that the diagnosis was palpably wrong and against all medical protocols, I find that Opposite Party No.2 who was possessed of his reasonable skills has exercised the best options in consultation with NIMHANS and even otherwise had devoted himself to the treatment of the Complainant every time the Complainant had approached the Opposite Party No.2. The law of negligence in the medical profession was discussed in the case of Jacob Mathew Vs. State of Punjab (2005) 6 SCC 1 the ratio whereof requires a much higher degree of gross negligence in order to hold a medical professional to be liable for any such act.

42. In the instant case, in view of the facts on record and as discussed herein above, I do not find this to be a case of gross medical negligence as alleged by the Complainant and therefore, I do not find any reason to hold the Opposite Party No.2 liable for any of his acts for any loss or damage to the Complainant. The Complaint is accordingly dismissed.

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A. P. SAHI

PRESIDENT