NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2931 OF 2018

(Against the Order dated 31/07/2018 in Appeal No. 23/2016 of the State Commission Jharkhand)

1. DR. KHURSHID AHMAD
S/O. LT. MR. IMTEYAZ AHMAD, R/O. KARMIK NAGAR,
P.O. KARMIK NAGAR, P.S. SARAIDHELA,
DHANBAD
JHARKHAND .....Petitioner(s)

Versus

1. SURENDRA PRASAD & 3 ORS.
S/O. SHRI FAGU LAL, R/O. BARTAND CO-OPERATIVE
COLONY, P.O. & P.S. AND
DISTRICT-DHANBAD
JHARKHAND
2. MINOR KUMARI SHIKHA RANI
D/O. SURENDRA PRASAD,R/O. BARTAND CO-OPERATIVE
COLONY, P.O. & P.S. AND
DISTRICT-DHANBAD
JHARKHAND
3. DR. M.P. JHA
R/O. SUMAN KUNJ NILACHAL COLONY, SARAIDHELA
P.O. AND P.S. SARIDHELA
DISTRICT-DHANBAD
JHARKHAND
4. DR. ANIMESH PRIYA
. .....Respondent(s)

REVISION PETITION NO. 3022 OF 2018

(Against the Order dated 31/07/2018 in Appeal No. 23/2016 of the State Commission Jharkhand)

1. DR. M.P. JHA
S/O. LT. UGRALAL JHA, R/O. SUMAN KUNJ, NILANCHAL
COLONY, SARAIDHELA P.O. & P.S. SARAIDHELA,
DISTRICT-DHANBAD
JHARKHAND-828127 .....Petitioner(s)

Versus

1. SURENDRA PRASAD & ORS. .....Respondent(s)
S/O. SHRI FAGU LAL, R/O.BARTARD CO-OPERATIVE
COLONY, P.O. P.S. DHANDBAD
DISTRICT-DHANBAD
JHARKHAND
2. KUMARI SHIKHA RANI
D/O. SURENDRA PRASAD,R/O.BARTARD CO-OPERATIVE

COLONY, P.O. P.S. DHANDBAD
DISTRICT-DHANBAD
JHARKHAND
3. MINOR MASTER SONU
S/O. SURENDRA PRASAD R/O.BARTARD CO-OPERATIVE COLONY, P.O. P.S. DHANDBAD
DISTRICT-DHANBAD
JHARKHAND
4. DR. KHURSHID AHMAD
S/O. LT. DR. IMTEYAZZUDDIN AHMAD, R/O. KARMIK NAGAR, P.O. KARMIK NAGAR, P.S. SARAIDHELA,
DISTRICT-DHANBAD
JHARKHAND-826004
5. DR. ANIMESH PRIYA
S/O. LT. DR. SHANKAR PRIYA R/O. LUBY CIRCULAR ROAD, DHANBAD, P.O. P.S. &
DISTRICT-DHANBAD
JHARKHAND

BEFORE:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR,MEMBER

For the Petitioner :
For the Respondent :

Dated : 07 Jul 2022

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For Dr. Khurshid Ahmad	:	Ms. Amrita Singh, Advocate
For Surendra Prasad & Minor Kumari Shikha	:	Mr. S.P. Sahay, Advocate
For Dr. M.P. Jha	:	Mr. Ranjan Kumar, Advocate with Mr. Kapil D. Yadav, Advocate
For Dr. Animesh Priya	:	Mr. Uday Shanker Sinha, Advocate

Pronounced on: 7th July 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. The instant Revision Petitions have been filed against the order dated 31.07.2018 passed by the State Consumer Disputes Redressal Commission, Jharkhand at Ranchi (hereinafter referred to as the 'State Commission') in First Appeals Nos. 23 & 24 of 2016, wherein the State Commission dismissed FA/24/2016 and partly allowed the application for enhancement filed in FA/23/2016.

2. For the convenience the parties are referred here as they were placed in the Complaint filed before the District Forum. The Complainants are Sri Surendra Prasad as Complainant No.1 and also represented the Complainants Nos.2 & 3 and the Opposite Parties are Dr. M.P. Jha (OP-1), Dr. Khurshid Ahmad (OP-2) and Dr. Animesh Priya (OP-3).

3. Briefly stated facts are that on 11.09.2004 the Complainant's wife Lata about 30 years was operated by Dr. M.P. Jha (OP-1) for removal of gall stones, it was assisted by Dr. Khurshid Ahmad (OP-2) and Dr. Animesh Priya (OP-3) as an anesthesiologist. It was alleged the Complainant was waiting outside the operation theatre; the operation was started at 5 p.m. but at 9 p.m. it was declared that the patient was died inside the Operation Theatre(OT). Post mortem (PM) was performed at Patliputra Medical College and Hospital (PMCH). The cause of death was stated to be shock due to bacteremia and septicemia. Being aggrieved the Complainant filed the Consumer Complaint before the District Forum at Dhanbad and also filed a Criminal Complaint u/s 304-A/34 of IPC.

4. The District Forum, vide order dated 11.01.2016, allowed the Complaint against all the OPs, and directed to pay compensation of Rs.5,00,000/- to each of the Complainants with 9% interest p.a. and also directed to pay Rs.25,000/- as litigation cost to the Complainants.

5. Being aggrieved by the Order of District Forum Dr. M.P. Jha (the OP-1) and Dr. Khurshid Ahmad (OP-2) filed F.A. No.23/2016 & Dr. Animesh Priya (OP-3) filed F.A. No.24/2016 before the State Commission, Jharkhand at Ranchi. The Complainants have filed one application in F.A. No.23/2016 for enhancement of compensation.

6. The State Commission dismissed F.A. No.23/2016, but partly allowed the application for enhancement and directed the Appellants (OP-1 & 2) to pay Rs.15,00,000/- each to the Complainants @ 9% interest p.a. from the date of filing of the Complaint. The F.A. No.24/2016 was allowed and Dr. Animesh Priya (OP-3) was exonerated from the liability.

7. Being aggrieved, the OP-1 & 2 filed these two Revision Petitions before this Commission.

8. Heard the learned Counsel for the parties and perused the entire material on record, the medical literature on cholecystitis and the medical record.

9. The learned Counsel for the OP-2 argued that admittedly, from 08.09.2004 to 11.09.2004, the patient of acute cholecystitis was initially treated conservatively by Dr. M.P. Jha (OP-1) and decide to perform open surgery. On 11.09.2004, in the evening, Dr. Khurshid (OP-2) reached Navjivan Clinic to assist OP-1 during surgery. Therefore he had no role in performing the operation. The OP-2 was neither the owner of Navjivan Clinic, nor an employee of the clinic and no way concerned with unhygienic clinic's conditions. However, the State Commission held him also liable and based on assumptions passed the order as below (Para-27):

> "in such a serious condition, it was highly improper on the part of both the appellants to hastily abandon conservative treatment and perform "open surgery" without, even for a moment considering the option of "percutaneous cholecystectomy".

Thus, the State Commission held both the Dr. M.P. Jha and Dr. Khurshid Ahmad for negligence on the ground that proper conservative treatment was not given to the patient which caused septicemia.

10. The second limb of argument was though the Complainants had not filed any cross appeal before the State Commission to challenge the quantum of compensation but the State Commission wrongly enhanced the compensation.

11. We have perused the entire material on record, the treatment/progress sheet and orders of both the fora.

12. The medical record showed that on clinical examination and based on USG and other investigations, it was diagnosed as a case of acute cholecystitis. Therefore the patient was admitted to Navjivan Clinic on 08.09.2004. On examination Pulse rate 104/min (tachycardia) and fever (99^0 F). Immediately standard conservative treatment was started with I.V. fluids, broad spectrum Antibiotics, Analgesics and Anti Emetic drugs. On 10.09.04 vomiting was stopped, fever reduced but the pain and tenderness persisted. The pain got worsened from early morning 3 AM. Therefore, OP-1 at 10.00 a.m. decided to stop conservative treatment and operate the patient as per standard principles of surgery. After explaining the risks and possible complications of operation, anesthesia, informed written consent was taken from the patient and her husband. The patient was operated at 5 PM and shortly, thereafter the patient started breathing problem. It was treated with appropriate drugs and given blood transfusion. The vital parameters pulse, blood pressure and oxygen level were restored to normal. But the breathing problem persisted and oxygenation level started decreasing. The deceased was re-intubated multiple petechial hemorrhages were found in the mouth, palate and pharynx. The chest was congested. All resuscitative measure failed to improve the condition of the patient. She developed the sudden cardiac arrest, but despite all resuscitative measures, the patient could not revive and declared dead at 9.30 p.m.

13. It is evident from the report of USG, there was no stone(s) in the gall bladder and it was not life-saving or emergency surgery. It appears the OP-1 took hasty decision to operate the patient. Even, we note the doctors including Anesthetist gave fitness to said surgery. The patient was taken for surgery at 5.30 pm and declared dead at 9.00 p.m. which creates lot of doubts on the treatment of OPs.

14. The operative notes also revealed that the OP-1 completed dissection successfully and the gallbladder was removed. There was some extra bleeding from the liver bed (more than usual). This was controlled by putting 4 pieces of geleo-sponge and stitching the gallbladder end. At the time of shifting the patient to her bed, she felt breathing trouble, it was managed by the Anesthetist. It is pertinent to note that the urinary catheter showed blood stained urine, but the OPs-1 and 2 failed to rule out the causes of the same.

15. The Postmortem (PM) was done and the cause of death given was septicemic shock. However, report expressed possibility of re-exploration cannot be ruled out, which creates shadows in our mind. On careful perusal of Post Mortem report, it is clear that no drain was put after gall-bladder operation. The re-operation was done to ligate the bleeding vessels and to put a drain. Moreover, there was no other indication to open the abdomen. In the instant case, emergency Cholecystostomy was necessary to drain bile or pus, and the conservative treatment should have been continued till recovery.

16. The case of OPs that the patient was already in septicemia. Therefore, removal of gallbladder was absolute necessity to avoid fatal complications. We do not agree with this contention of OPs because primarily they failed to rule out the other causes of septicemia by proper investigations like blood culture, liver function test etc.

17. It is pertinent to note that, prior to operation, the patient's hemoglobin (9.9 g%) and blood pressure (100/70) were not normal, therefore, in case of acute acalculous cholecystitis (AAC) instead of surgery, initial step in treating acalculous cholecystitis should be conservative with antibiotics and source control. In the instant case, the decision of OP-1 was hurriedly taken. The operation was not an emergency or lifesaving, therefore, the OPs should have ruled out other causes of AAC and waited till proper diagnosis.

18. We have gone through standard books on Surgery and research articles.

An appropriate history, clinical findings, and laboratory data along with high suspicion index are factors needed in order to reach a correct and rapid diagnosis. These factors should be completed by imaging such as computed tomography and ultrasound. The non-operative management of AAC done with nasogastric suction, intravenous

fluids, and antibiotics with resolution of clinical and imaging finding. Cholecystectomy will be required in cases associated with increasing gallbladder wall thickening and distension and with persistence of the non-shadowing echogenic materials or sludge in the gallbladder and of pericholecystic fluid. **Percutaneous cholecystostomy** drainage may be an alternative approach in critically ill patients except in cases of gallbladder perforation or gangrene. Percutaneous drainage controls AAC in about 85% of patients, and appears to be equivalent to open procedures. Empiric percutaneous cholecystostomy has been advocated on patients who have sepsis but no demonstrable source.

19. The medical literature **Evaluation of Acalculous Cholecystitis, Diagnosis and Management**[1] by Jamil Addas et al discussed about the Acute acalculous cholecystitis (AAC) is the inflammation of the gallbladder without the presence of gallstone. Acalculous cholecystitis is prevalent mostly in critically ill patients, after cardiac surgery, severe trauma, abdominal vascular surgery, typhoid, malaria, sepsis or burns. Other causes of increasing the incidence of acalculous cholecystitis can be long periods of fasting, total parenteral nutrition, and drastic weight loss. There can be mild elevations in the liver function tests. However, jaundice is not usually caused directly by the disease at least not in the early stages. The fulminant course of this disease is mostly associated with empyema, perforation, and gangrene and also significantly higher mortality and morbidity. The diagnosis of acute acalculous cholecystitis is difficult due to the overlapping with concomitant disorders, such as cardiovascular disorders.

20. The initial step in treating acalculous cholecystitis should be similar to treating other infections, i.e. antibiotics and source control. Then, cholecystectomy or drainage by percutaneous cholecystostomy should be done. Intravenous antibiotics administration early plays a critical role in fighting the infection and achieving source control. The percutaneous cholecystostomy tube should be placed by the interventional radiologist to secure the drainage of the gallbladder. Percutaneous cholecystostomy controls acalculous cholecystitis in more than 85% of the patients. Compared to open cholecystectomy, percutaneous cholecystostomy has shown lower morbidity, fewer admissions in the intensive-care unit, decreased length of stays, and lower costs. Moreover, the overall rate of complications of percutaneous cholecystostomy is approximately 2%, which is considered low especially that it is mostly used in critically ill.

21. Then, cholecystectomy or drainage by percutaneous cholecystostomy can be done. Percutaneous cholecystostomy has shown a high success rate in controlling cases of acalculous cholecystitis. Successful percutaneous cholecystostomy is associated with very good outcomes and rapid improvement.

22. The petitioners raised the point that the State Commission, without any ground, enhanced the compensation. They also raised brought our attention to the factual development that the Complainant No. 1 (Surendra Prasad) remarried and the Complainant No. 3 (Master Sonu) passed away after filing the Complaint and the name of Master Sonu was deleted from the array of the parties. Therefore, the compensation awarded to all the Complainants was erroneous. As the case may be, in our view, the quantum of award made by the State Commission is just and adequate against the OPs-1 and 2.

23. To sum up the discussion, it is apparent from the record that informed consent is not on record. The OP-1 and 2 failed to rule out other causes of AAC by conducting investigations like Liver Function Tests, Typhoid /Malaria etc. The pre-aesthetic check-up details are not available on record. Therefore, the Anaesthetist Dr. Animesh Priya (OP-3) is also liable for his failure of duty of care for not doing pre-anaesthetic check-up and also failed to ascertain the facilities available for resuscitation in the hospital. The State Commission erred by exonerating OP-3. Further, we can't ignore the operative note which has recorded bleeding. Therefore patient suffered hypotension and he was transfused Haemaccel and 2 units of blood. Thus, possibility of intra-abdominal bleeding can't be ruled out. In our considered view all the OPs have failed in their duty of care towards the patient. It was not a reasonable standard of practice, thus, negligence. Though role of Dr. Khurshid Ahmad was limited to assist the OP-1 during surgery but as a surgeon he has duty towards the patient and decision making. Therefore, he cannot be totally exonerated from the liability. Therefore, the Order of the State Commission is modified to the extent of their (all OPs) liabilities. In the ends of justice, in our view, all the Opposite Parties are liable for the death of patient. Accordingly, the captain of the ship Dr. M. P. Jha (OP-1) shall pay Rs. 15 lakh and Dr. Khurshid Ahmad (OP-2) & Dr. Animesh Priya (OP-3) shall pay Rs. 5 lakh and Rs. 2 lakh respectively to the Complainants.

24. We cannot ignore the fact that the Complainant No. 1 got remarried and Complainant No. 3 died during the proceedings before the State Commission (Para-22). Therefore, the entire amount (Rs.22 lakh) shall be paid to Ms. Shikha Rani, daughter of the deceased within six weeks from today. In case of delay beyond six weeks, the amount shall carry interest @ 9% p.a. till its realization.

25. Both the Revision Petitions, being devoid of merits, are disposed of with the above modification.

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[1] Archives of Pharmacy Practice ¦ Volume 10 ¦ Issue 3 ¦ July-September 2019

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER