

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1641 OF 2014

(Against the Order dated 10/12/2013 in Appeal No. 786/2013 of the State Commission Andhra Pradesh)

1. PESARLANKA VENKATA SUBBAMMA
W/O P.VEERABRAHMAM R/O 52-4-99/B,
VIJAYNAGAR COLONY, GUNDALA,
VIJAYAWADA

A.P.

.....Petitioner(s)

Versus

1. SVR NEURO & TRAUMA SUPER SPECIALITY
HOSPITAL PVT. LTD. & ANR.
REP BY ITS MANGING DIRECTOR, 401/1-14, ABC
SHIVANAND STREET, OPP RPAD, TO KALANJALI ,
LABBIPET, MG ROAD,
VIJAYAWADA

A.P.

2. DR.S.V RAO.RANGA RAO, S/O PRAKASH RAO,
401/1-14 ABC SHIVANAND STREET, OPP ROAD TO
KALANJALI, LABBIPET, MG ROAD,
VIJAYAWADA

A.P

.....Respondent(s)

BEFORE:

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

For the Petitioner :

For the Respondent :

Dated : 14 Jun 2021

ORDER

Appeared at the time of arguments through video conferencing

Ms. Kiran Suri, Sr. Advocate

For Petitioner

: with Mr. Parvesh Bhuttan, Advocate

For Respondents : Mr. Sridhar Potaraju, Advocate
Mr. Gaichangpou Gangmei, Adv

Pronounced on: 14th June, 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The instant Revision Petition has been filed against the Judgment and Order dated 10.12.2013 passed in F.A. No. 785/2013 of the State Consumer Disputes Redressal Commission, Hyderabad, Andhra Pradesh (hereinafter referred to as, 'State Commission'), wherein and whereby the State Commission modified the Order of the District Consumer Disputes Redressal Forum - II, Krishna District, Vijaywada, Andhra Pradesh (hereinafter referred to as the 'District Forum') reducing the compensation from Rs.3,00,000/- to Rs.50,000/-

2. Brief facts:

The Complainant was under treatment of Dr. Nagendra Babu for her backache since 08.08.2003. Thereafter on 13.5.2004 she approached the Opposite Party No.-2, Dr. S. V. Ranga Rao at S. V. R. Neuro and Trauma Super Specialty Hospital for short, "SVR Neuro Centre / Hospital", the Opposite Party No. 1. It was alleged that the Opposite Party No. 2 told it was a serious problem and immediate surgery was required, else her limbs would be paralysed. Due to put in fear of paralysis patient's husband agreed for surgery. On the same day she was admitted. On the next day 17.05.2004, she was operated by the Opposite Party No.2 and discharged on 26.05.2004 though she was not cured of pain. It was further alleged that after discharge for entire month of June she was suffering from pain and fever. She was again admitted on 14.07.2004 in Opposite Party No.-1 Hospital with the complaints of backache, loss of appetite and weakness. At that time patient's husband informed the Opposite Party No. 2 that is daughter suffered from Spinal TB at her age of 19 years and therefore requested to check and treat the patient carefully. On knowing that immediately Opposite Party No. 2 sent the disc piece for biopsy on 19.7.2004 to Amba Diagnostic Centre to rule out TB. It was alleged that the Opposite Party No. 2 could have sent the pieces immediately after surgery on 17.05.2004 itself. For the back pain, the Opposite Party No. 2 advised to consult the Psychiatrist Dr. Radha Krishna Reddy and for fever to some Physician. The patient was discharged on 22.07.2004 even though there was no relief from pain and fever. Consequently, on 09.09.2004, the patient got admitted in Dr. Samaram's Hospital, complaining of swelling on the back and burning sensation. She was provided sand bag traction and medicines. She got discharged on 30.09.2004, with a suggestion to consult a neuro-surgeon. On 09.10.2004, the patient was again brought to Opposite Party No. 2 who performed needle aspiration of the swelling there was no pus/fluid. He told that nothing was serious. Till 04.01.2005, despite repeated visits to Opposite Party No.-1 hospital for growing pain, the Opposite Party No.-2

casually attended the patient. He was just insisting on treatment of depression. On 14.01.2005, the patient consulted physician Dr. Radha Krishna Murthy who diagnosed her as 'cold abscesses caused due to TB of spine'. Dr. Shankar Rao drained out the pus and the patient got some relief. Dr. Shankar Rao referred the patient to Nizam Institute of Medical Sciences, Hyderabad (hereinafter referred to as the "NIMS") on 20.01.2005 wherein TB of spine was diagnosed and she was undergoing treatment.

3. The patient alleged that the Opposite Party No. 2 hurriedly performed the surgery without conducting necessary tests to diagnose the TB. She suffered prolonged continuous pain for more than 9 months and bed ridden for several months with mental agony. Being aggrieved, the Complainant filed a Consumer Complaint being CC No. 212 of 2005 before the District Forum - II, Krishna District, Vijayawada for the alleged gross medical negligence.

4. The District Forum partly allowed the Complaint and directed the Opposite Parties Nos. 1 and 2 to pay jointly and severally a sum of Rs. 3,00,000/- with interest at the rate of 9% per annum from 25.10.2005 and Rs.10,000/- towards the cost.

5. Being aggrieved the Opposite Parties filed the First Appeal before the State Commission. The Appeal was partly allowed with the modification in the Order of the District Forum and it was directed to the Opposite Party No. 1 to pay Rs.50,000/- with interest at the rate of 9% per annum from the date of filing of the Complaint and Rs.10,000/- towards the costs and the Complaint against the Opposite Party No. 2 was dismissed.

6. Being aggrieved due modified reduced compensation by the State Commission, the Complainant filed the instant Revision Petition.

7. We have heard the learned Counsel for both the sides.

8. The main question is whether it was a case of medical negligence wherein the Opposite Party No. 2 operated patient unnecessarily without diagnosing TB Spine and the post-operative suffering of the patient was due to delayed treatment of TB spine.

9. We have perused the Orders of both the fora, the entire Medical Record of the Opposite Party No. 1 Hospital, the Evidence of doctors at NIMS and the Medical Literature on TB spine and its treatment.

10. In the Medical Record of Opposite Party No. 1 hospital, it is evident that the Opposite Party No. 2 examined the patient on 16.05.2004, X-ray and MRI of spine at L4 & L5 were done. He diagnosed it as a case of L4 L5 disc prolapse. There were no signs of TB spine in X-ray and MRI of spine. On 17.05.2004 laminectomy was performed. At the time of discharge the operative wound was healed and the patient did not have any pain or neurological signs.

11. The patient took treatment at NIMS from 20.1.2005. The Discharge Summary dated 01.02.2005 of NIMS, it was diagnosed as Koch's Spine T 12 and L1 vertebrae with pus draining sinus. The Head of Department of Neurosurgery, Dr. Purohit, in his evidence, stated that the diagnosis was based on non-specific tests like ESR and Montoux Test. Even the pus aspiration did not confirm the TB and the Pus culture was negative; therefore it was suspected as Koch's and empirical treatment was started to which the patient moderately responded.

12. We have gone through the medical literature on Diagnosis and Treatment of Tuberculosis, the medical text book "Toman's Tuberculosis" and the "Tuberculosis of the Skeletal System" by S.M.Tuli. The ESR is a non-specific test and has a prognostic value. There are several reasons for increase in ESR like old age, anaemia, chronic diseases, polymyalgia and Rheumatoid arthritis, etc. For the confirmed diagnosis of TB it is necessary to detect Mycobacterium TB in microscopy or cultures or by immunological tests. We note the NIMS have not conducted any immunological tests to diagnose TB.

13. According to the Complainant, the Opposite Party No. 2 failed to diagnose spinal TB and as soon as after surgery he did not send the vertebral disc pieces for biopsy to confirm tuberculosis. It is pertinent to note that the MRI and X-ray spine did not show any abnormality or signs of TB, therefore clinically TB spine was ruled out. Thus, in our considered view sending of the removed disc piece did not make any adverse effect, as the biopsy sent at later stage was negative for TB.

14. We note that the District Forum held no deficiency in service on the part of the Opposite Party No. 2 in performing the laminectomy surgery. However the District Forum held that the Opposite Party No. 2 failed to note swelling on the back and could have advised other tests when patient had persistent pain. Further, the State Commission observed that there was no specific negligence on the part of the Opposite Party No. 1 hospital. However, taking into account the Complainant's pain for a period of 9 months and that she was not treated properly but suggested to approach a psychiatrist, it held some negligence on the part of Opposite Party No. 1 Hospital. Thus the State Commission modified the award of District Forum to Rs. 50,000/- with interest @ 9% per annum.

15. In our view, the Complainant failed to prove that she was suffering from Koch's Spine at the time of admission (May 2004). Secondly after laminectomy as per standard surgical practice, it is not mandatory to send the disc material for histo-pathological examination (HPE). The operating surgeon shall decide it on the basis of clinical surgical findings whether there is any need for HPE. We do not think it was neither a failure in standard duty of care nor deficiency in treatment. The complainant's allegation is not sustainable.

16. In our considered view, the patient was suffering from severe back ache and based on X-ray and MRI investigations there was no evidence of TB spine, therefore Laminectomy was performed by Opposite Party No. 2. There was no negligence while conducting the surgery. Detection of Koch's spine after 6 months has no nexus with the laminectomy. The observations of District Forum and the State Commission are erroneous, wherein no negligence could be attributed to the treating doctor. Therefore we dismiss the Complaint.

17. However, on humanitarian ground; considering the facts and the suffering of the patient we request the hospital Opposite Party No.1 be magnanimous and pay only Rs.50,000/- as an *ex gratia* amount to the Complainant.

It is made clear that this shall not be a precedent in any manner.

.....J
R.K. AGRAWAL
PRESIDENT
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DR. S.M. KANTIKAR
MEMBER