

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 262 OF 2012

(Against the Order dated 26/07/2011 in Appeal No. 363/2008 of the State Commission Tamil Nadu)

1. K. KASI & ORS.

E. Pudhupatti, Endapulli Post, Devadanapatti(Via),
Periyakulam

Theni

Tamil Nadu

2. K. Rajeshwari, D/o K. Kasi.,

E. Pudhupatti, Endapulli Post, Devadanapatti(Via),
Periyakulam

Theni

Tamil Nadu

3. Minor K. Barath Kumar,

E. Pudhupatti, Endapulli Post, Devadanapatti(Via),
Periyakulam

Theni

Tamil Nadu

.....Petitioner(s)

Versus

1. DR. A. SENTHILKUMAR & ORS.

Vadagarai,

Periyakulam - 625601

Tamil Nadu

2. The Christan Hospital, Periyakulam

Rep By its Medical Superintendent VAIGAI DAM
ROAD,

THENI DISTRICT

TAMIL NADU

3. The Apollo Hospitals,

Lake View Road, K.K Nagar

Madras - 625 020

Tamil Nadu

.....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 : 21 Jan 2022

ORDER

Appeared at the time of arguments

For the Petitioner : Mr. P. R. Kovilan Poongkuntran, Advocate

For the Respondent No.-1 : Mr. Vikas Mehta, Advocate

Mr. Adith Nair, Advocate

Nemo for others

Pronounced on: 21st January 2022

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The instant Revision Petition has been filed against the Order dated 26.07.2011 passed by the State Consumer Disputes Redressal Commission, Chennai, wherein F.A. No. 363/2008 filed by the Opposite Party was allowed and consequently, the Complaint was dismissed.

2. The issue relates to alleged medical negligence as a cause of death of Complainant's wife due to the injection abscess developed after intra muscular injection of Voveran in the left gluteal region.

3. The facts in brief are that the Complainant's wife Smt. K. Jothi (hereinafter referred to as the 'patient') was suffering from fever with joint & body pain. She consulted Dr. Senthilkumar (hereinafter referred to as the 'Opposite Party No. 1') on 29.08.2006 who diagnosed it as a case of "Chikungunya Fever". He did not conduct any blood or related investigations to confirm the diagnosis. It was alleged that he administered Voveran (Diclofenac Sodium) injections in the left buttock on 29th and 31st August, 2006 each. The fever and swelling did not subside, therefore on 02.09.2006, the Opposite Party No. 1 referred the patient to Christian Hospital (hereinafter referred to as the 'Opposite Party No. 2') wherein diagnosed severe Diabetes Mellitus with injection abscess because of faulty injection given by the Opposite Party No. 1. From there, the patient was referred to Apollo Specialty Hospitals (hereinafter referred to as the 'Opposite Party No. 3') at 5.15 a.m. on 03.09.2006. The patient showed extensive cellulitis extending from left iliac fossa to left thigh, gluteal region, but despite treatment, the patient died on 04.09.2006 at 7.15 pm. Being aggrieved by the negligence treatment, the Complainant filed the complaint before the District Consumer Disputes Redressal Forum, Theni (hereinafter referred to as the 'District Forum').

4. The Opposite Parties resisted the Complaint and denied any negligence.
5. The District Forum, on hearing the parties, partly allowed the Complaint and held the Opposite Party No. 1 liable for medical negligence.
6. Being aggrieved, the Opposite Party No. 1 filed the Appeal before the State Commission. The Appeal was allowed and consequently, the Complaint was dismissed. Hence, this Revision Petition was filed by the Complainant.
7. We have heard the learned Counsel for both the sides. Perused the material on record.
8. The case of the Complainants that the Opposite Party No. 1 failed to diagnose chikungunya correctly. Without confirming the diagnosis, he blindly administered voveran injections in the gluteal region on two days, which caused infection and cellulitis and further led to septicemic shock and death, whereas the case of the Opposite Party No. 1 was that the injection was not given in the buttock region. The first injection was given in the left upper arm, and the second injection was given on 31.08.2006, in the right upper arm.
9. The learned Counsel for the Opposite Parties stated that the Complainant suppressed the facts. It is evident from the discharge summary of Christian Hospital dated 02.09.2006 that she took injections in her gluteal region one week back, meaning thereby, she took injection on 27.08.2006 i.e. two days prior to approaching the Opposite Party No. 1. During the course of treatment at Christian Hospital, she was detected highly diabetic, which was the main cause of infection and cellulitis. Most of the cases of injection abscesses are associated with certain co-morbidities like diabetes mellitus, anaemia, malignancy etc. The injection Abscess will not cause any gas producing organisms and severe septicemia.
10. We note that the Opposite Party No. 1 is a Pediatrician. The Government GO dated 22.05.2009, it was declared that chikungunya was prevalent in District Theni, wherein it was suggested to take care of the chikungunya cases on priority. It should be borne in mind that any prudent treating doctor logically would inject 2nd dose on the painful or swollen part of the body. As per the medical literature, the diabetic patients having Chikungunya may collapse, if not taking any anti-diabetic drugs. In the instant case, the patient was incidentally diagnosed as severe diabetic, who was admittedly not on anti diabetic medicines. Moreover, the Opposite Party No.1 stated that there was no place to maintain privacy for the lady patient to inject on gluteal region, therefore, he prefer IM injection in upper arms for the female patients.
11. We have carefully perused the medical prescriptions of the Opposite Parties. The clinical notes of Christian Hospital revealed that the patient was in septicemic shock having large area of cellulitis in left buttock thigh region. The patient did not pass urine. She was treated with higher antibiotics. The Dopamine drip was started but her BP was not improving. She was also detected as diabetic, having blood sugar 433 mg and she was started with Monotard 1.2 cc. Finally it was diagnosed as diabetes mellitus with injection Abscess, septicemia and renal failure. The blood sugar level was continuously on a higher side. Therefore, the patient was shifted to Apollo Speciality Hospital (Opposite party No. 3) for further management. It was noted there that the cellulitis was extending from left iliackhosa upto left thigh. There was a skin loss of gluteal region and upper 1/3rd of thigh under short general anesthesia wound debridement was performed. However at 7pm on 04.09.2006, the patient developed sudden cardiac arrest, despite CPR the patient could not survive and declared dead at 7.15 pm.

12. In our considered view, the Complainant failed to prove that the Opposite Party No. 1 had given Voveran injection negligently in the gluteal region caused injection abscess. Incidentally, at Christian Hospital it was found that the patient was highly diabetic. The highly diabetic patients are known to suffer septicemia and other complications more so also cardiac arrest. We do not find any negligence on the part of the Opposite Parties during treatment of the patient.

13. The Hon'ble Supreme Court in catena of judgements on medical negligence held that every mishap shall not be construed as a negligence of the treating doctor or the hospital to fasten the liability. In the instant case the case of death was not injection abscess.

14. Based on the foregoing discussion, we do not see merit in the instant Revision Petition, the same is dismissed.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER